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Written submission by the Australian Human Rights Commission*

Note by the Secretariat

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2014 Mid-term Universal Periodic Review Report by the Australian Human Rights Commission

I. Introduction

1. This 2014 UPR Progress Report is the fourth in a series of annual reports developed in the lead up to Australia's Second Cycle Universal Periodic Review (UPR) at the United Nations (UN) Human Rights Council.[1] The second cycle review is tentatively scheduled for 9 November 2015.[2]

2. The reports are lodged with the Human Rights Council annually to provide accountability for Australia's progress under the UPR.

3. The UPR is a unique process which involves a review of the human rights records of all 193 UN Member States once every four years. It is a Member State-driven process, under the auspices of the Human Rights Council. As it is a peer review process, recommendations are made by other governments rather than by independent experts. The UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.

4. The UPR was created through the UN General Assembly on 15 March 2006. The first cycle reviews of all Member States were completed by October 2011. The second cycle of reviews commenced in 2012 and are due to be completed by 2016.

5. The first cycle review of Australia was conducted in 2011. 52 countries asked questions about Australia's human rights record and made 145 recommendations. The Australian Government accepted in full or in part over 90 per cent of these and also made a number of voluntary commitments to actions. The 2014 report has been prepared by the Australian Human Rights Commission (the Commission) on behalf of the Australian Council of Human Rights Authorities (ACHRA), a body that brings together all Commonwealth, State and Territory anti-discrimination and human rights bodies.

6. Over the last 12 months there have been some positive developments in the protection and promotion of human rights in Australia. ACHRA welcomes the following achievements:

- The continued roll out of the National Disability Insurance Scheme
- The appointment of a Human Rights Commissioner at the Australian Human Rights Commission
- The robust human rights analysis of proposed legislation by the Parliamentary Joint Committee on Human Rights
- Launch of Australia's National Action Plan to Combat Human Trafficking and Slavery 2015–19.

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[1] Australian Human Rights Commission, Australia's Universal Periodic Review on human rights – Annual Progress Reports. At https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights (viewed 18 November 2014).

[2] Office of the High Commissioner for Human Rights, UPR Sessions. At http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx (viewed 18 November 2014).

7. Despite these positive developments, ACHRA is concerned that there has been limited action taken to advance human rights across a range of subject areas. Many actions committed to through the UPR process, and reflected in Australia's National Action Plan on Human Rights, have not been implemented or advanced over the past year.

8. This report contains a table (Appendix 2) listing the 145 recommendations made to Australia in the first round of the UPR. It indicates which recommendations have been:

- Implemented
- Partly implemented
- Not implemented
- Not supported at the time of the UPR review.

9. The information in the table reveals that at the present time only 11 per cent of recommendations that Australia accepted (in whole or in part) have been fully implemented since 2012. ACHRA is concerned at regressions in human rights protection in relation to asylum seekers. Of particular concern is the lengthy detention of asylum seekers, including children, through: Australia's mandatory immigration detention system; the use of third country processing; and the removal of direct references to Australia's non-refoulement obligations under the *International Covenant on Civil and Political Rights* (ICCPR), *Convention on the Rights of the Child* (CRC), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and *Convention Relating to the Status of Refugees* from the *Migration Act 1958* (Cth). Bills still before Parliament also raise significant concerns about human rights protection, such as amendments to the *Australian Citizenship Act 2007* (Cth),[3] and confirm that refugee law and asylum seeker policy remains one of Australia's biggest human rights challenges.

10. ACHRA continues to be concerned at the lack of progress towards ratifying the *Optional Protocol to the Convention against Torture* (OPCAT), as well as lack of progress in advancing commitments made in the UPR process to review reservations to treaties.

11. This report is organised in accordance with the thematic groupings and headings that are used in the UPR reporting process.

II. Background and framework for promotion and protection of human rights

2.1 Scope of international obligations

12. Australia prides itself on its commitment to the promotion and protection of human rights and has announced its candidacy for election to the Human Rights Council for the 2018–20 term.[4] The Australian Government considers that the promotion and protection of human rights is crucial to achieving peace, security, freedom and dignity for all.[5]

[3] Australian Citizenship and Other Legislation Amendment Bill 2014 (Cth).

[4] Department of Foreign Affairs and Trade, Human Rights – Australia's Multilateral Initiatives. At http://www.dfat.gov.au/issues/human-rights/ (viewed 23 November 2014).

[5] Department of Foreign Affairs and Trade, Human Rights – Australia and Human Rights. At http://www.dfat.gov.au/issues/human-rights/ (viewed 23 November 2014).

13. The Australian Government made several voluntary commitments at the UPR first cycle review.[6] ACHRA acknowledges the fulfilment of the commitment to appoint a full time Race Discrimination Commissioner. However, ACHRA is disappointed that there continues to be limited action taken to implement other commitments such as the proposed review of Australia's reservations to human rights treaties and the tabling in Parliament of concluding observations from treaty bodies.

14. During the UPR Review, several countries encouraged the Australian Government to ratify the OPCAT.[7] Australia signed the OPCAT on 19 May 2009, but has not yet ratified it. It is practice in Australia that new treaty obligations are not entered into prior to a National Interest Analysis being conducted and reviewed by the Joint Standing Committee on Treaties (JSCOT) of the federal Parliament. In 2012, the JSCOT recommended that the government ratify the OPCAT.[8] However, there has been limited progress towards this since 2012:

- Section 14(1)(e) of the *Human Rights Commission Act 2005* (ACT) in the Australian Capital Territory (ACT) provides the ACT Human Rights Commission with powers of inspection and own-motion reviews.[9] These powers have been used to develop reports on conditions of detention and health provision to detainees in the ACT.

- The Northern Territory (NT) Government introduced the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 to Parliament on 22 August 2013. However the Bill has not been enacted to date.

- The Australian Government released the country's third National Human Rights Action Plan (NAP) on 10 December 2012. The NAP indicates that the federal government would work with states and territories to move towards ratifying the OPCAT. This commitment was also made at the first review of Australia at the Human Rights Council's UPR in 2011.

15. ACHRA is unaware of any action having been taken by the Standing Council on Law and Justice regarding efforts to encourage ratification of the OPCAT or the development of a National Preventive Mechanism since the above commitments were made.The Commission has called for the Australian Government to expedite ratification of the OPCAT on a number of occasions, most recently in the Commission's Submission to the UN Committee Against Torture.[10]

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[6] Human Rights Council, Report of the Working Group on the Universal Periodic Review – Australia, UN Doc A/HRC/17/10 (2011), para 88. At http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx (viewed 24 November 2014).

[7] Human Rights Council, Report of the Working Group on the Universal Periodic Review – Australia, UN Doc A/HRC/17/10, Recommendations 1, 4 and 6. At http://www.ohchr.org/EN/HRBodies/UPR/Pages/AUSession10.aspx (viewed 25 November 2014).

[8] Joint Standing Committee on Treaties, Report 125: Review into Treaties tabled on 7 and 28 February 2012. At http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/28february2012/report.htm (viewed 19 February 2015)

[9] Powers of inspection: Corrections Management Act 2007 (ACT) s 6; Children and Young People Act 2008 (ACT) s 153. Own-motion reviews: Human Rights Commission Act 2005 (ACT) ss 14(1)(e) and 48 and Human Rights Act 2004 (ACT) s 41.

[10] Australian Human Rights Commission, Information concerning Australia's compliance with the Convention Against Torture. At https://www.humanrights.gov.au/our-work/legal/submissions/submissions-united-nations (viewed 24 November 2014).

16. In 2014, a series of reforms to strengthen the UN treaty body system have been implemented by the UN. The reforms were prompted by a report from the UN High Commissioner for Human Rights (Navanethem Pillay 2008–2014),[11] and are set out in UN General Assembly (GA) Resolution Number 68/268.[12] ACHRA encourages the government to adopt the state relevant processes set out in the UNGA resolution.

17. ACHRA welcomes the Australian Government's ongoing assistance to representatives of people with disabilities to participate in key international forums on human rights. This assistance has enabled the capacity building of more than 30 participants (including six young emerging leaders) from more than 10 disability peak organisations and disability advocacy organisations to attend and participate in international events related to the *Convention on the Rights of Persons with Disabilities*.

18. ACHRA is nevertheless disappointed that the Australian Government has taken no action to consider or review its position on the *International Convention for the Protection of All Persons from Enforced Disappearance* and on the International Labour Organisation *Convention concerning Indigenous and Tribal Peoples in Independent Countries*.

2.2 National Framework

19. Australia has limited legislative protection of human rights at a federal level. The protection available is largely confined to broad protections against discrimination. ACHRA notes that the ACT and the state of Victoria have legislative protection of human rights.[13]

20. Last year's UPR Progress Report recorded that the previous Australian Government released exposure draft legislation to consolidate anti-discrimination law and address technical, definitional and operational differences between existing federal anti-discrimination laws. Due to significant public concern on several matters including the grounds of discrimination covered and changes to the onus of proof, the bill did not proceed beyond the draft exposure stage. Accordingly, significant technical and operational differences between the four existing federal discrimination laws remain. ACHRA encourages the Australian Government to consider options to reduce this complexity and create better consistency between the laws. This would not only assist the general community but also the business community, particularly small business.

21. The President of the Commission has described the Australian approach to the protection of human rights as a form of 'exceptionalism':

> By this I mean that relative to comparable common and civil law systems, Australia has adopted a multifaceted and unique regime for human rights protection. We have few constitutional or legislative protections for our traditional freedoms such as freedom of speech or protection from arbitrary detention without trial. We have no Charter or Bill of rights, unlike all other common law countries; for most legal systems, all domestic laws are

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[11] N Pillay, Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights (2012). At http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx (viewed 23 November 2014).

[12] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Resolution 68/268, UN Doc A/Res/68/268 (2014). At http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx (viewed 23 November 2014).

[13] Human Rights Act 2004 (ACT). At http://www5.austlii.edu.au/au/legis/act/consol_act/hra2004148/ (viewed 23 November 2014); Charter of Human Rights and Responsibilities Act 2006 (Vic). At http://www5.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/ (viewed 23 November 2014).

viewed through the prism of the rights defined in either the relevant Constitution or legislative Charter or Bill of Rights; Australia has no regional court like the European Court of Human Rights or similar courts in Latin America, Africa and the Middle East.

The consequence is that Australia is increasingly isolated from evolving jurisprudence and from the legal systems with which we share common values.[14]

22. ACHRA is concerned that the Australian Government has not yet implemented outstanding recommendations from the 2008 Senate Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality, and encourages the Australian Government to implement these amendments.

23. The Australian Government has continued to support a number of initiatives under the Human Rights Framework,[15] in particular, the Parliamentary Joint Committee on Human Rights (PJCHR). The PJCHR has quickly established itself as an important mechanism to implement Australia's international human rights obligations at the domestic level and has continued its role to:

- Scrutinise all bills and legislative instruments for compliance with human rights.
- Require the production of statements of compatibility of bills and legislative instruments with the seven main human rights treaties to which Australia is a party.

24. Since its establishment the PJCHR has produced 35 reports to Parliament scrutinising hundreds of bills and legislative instruments and highlighting those bills which it considered to either raise human rights concerns or to be incompatible with human rights. In 2014 the PJCHR's reports have included thematic examinations of three particular policy areas which were of concern: counter-terrorism legislation; migration and border protection; and social security.[16] The PJCHR has continued to be concerned about the *Stronger Futures* measures directed towards Aboriginal communities in the NT and is currently undertaking a 12 month review to consider the evidence and test the continuing necessity for the *Stronger Futures* measures. The PJCHR intends to table its report in mid-2015.[17]

25. ACHRA welcomed the release of the National Human Rights Action Plan (NAP) in December 2012. The Australian Government then commented that all UPR recommendations accepted or accepted in-part were referenced against specific actions in

[14] Professor Gillian Triggs, Free speech and human rights in Australia (Speech delivered at the Free Speech 2014 Symposium, Ultimo, 7 August 2014). At https://www.humanrights.gov.au/news/speeches/free-speech-and-human-rights-australia (viewed 23 November 2014).

[15] Australian Government, Australian Human Rights Framework (2010). At http://www.ag.gov.au/Consultations/Documents/Publicsubmissionsonthedraftbaselinestudy/AustraliasHumanRightsFramework.pdf (viewed 5 December 2014).

[16] Parliamentary Joint Committee on Human Rights, Committee Reports. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries (viewed 24 November 2014).

[17] Parliamentary Joint Committee on Human Rights, Review of Stronger Futures in the Northern Territory Act 2012 and related legislation. At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures2 (viewed 24 November 2014).

the NAP.[18] The NAP included a monitoring arrangement that involves progress reporting to coincide with the Australian Government's next UPR report planned for 2015.[19]

26. Disappointingly, many of the measures committed to in the Australian Human Rights Framework and in the NAP have not occurred or have dissipated. For example:

- Grants for human rights education activities were discontinued after the first round of funding
- A proposed review of the compatibility of all existing legislation with human rights was not completed, nor any results published
- Implementation of the NAP to date has been slow and many of the actions included will not be achieved within the agreed timeframe
- No review of the Human Rights Framework has been conducted despite the commitment to complete this in 2014.

27. Human rights education is foundational to the realisation of human rights and fundamental freedoms. Accordingly, human rights education must remain as a key priority and commitment for the Australian Government. The Commission has continued to host the Australian Public Service Human Rights Officer's Network in order to support Australian Public Service employees to understand how human rights relate to their work. The Commission has also developed a suite of resources, to be launched in February 2015, which will assist businesses to understand, promote and protect human rights. The Victorian Equal Opportunity and Human Rights Commission has also established a Victorian Public Sector Human Rights Network for those working in the Victorian Public Sector.

28. The Commission has continued to work with the Australian Curriculum, Assessment and Reporting Authority to mainstream human rights education in the national school curriculum. In December 2014, the Commission released a suite of resources as part of the *RightsEd* series that have been mapped to the Australian Curriculum.[20] The resources focus on the topics of anti-racism and disability rights, and are linked to the History, Geography and Health and Physical Education curricula. The Commission has also developed a mapping resource for teachers called *Human Rights Examples for the Australian Curriculum*.[21] This mapping resource is designed as a guide for teachers to provide human rights related examples that are consistent with key learning area content descriptions.

29. Additionally, the Commission has worked in partnership with ABC Splash to create an interactive educational website called *Choose Your Own Statistics*.[22] The content of this website has been closely mapped to the Australian Curriculum for Mathematics and is

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[18] Australian Government, National Action Plan on Human Rights, p 5. At http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf (viewed 23 November 2014).

[19] Australian Government, National Human Rights Action Plan, p 81. At http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf (viewed 23 November 2014).

[20] Australian Human Rights Commission, Human rights in the school classroom. At http://www.humanrights.gov.au/education/human-rights-school-classroom (viewed 19 February 2015).

[21] Australian Human Rights Commission, Human Rights Examples for the Australian Curriculum. At http://www.humanrights.gov.au/our-work/education/publications/human-rights-examples-australian-curriculum (viewed 19 February 2015).

[22] ABC Splash, Choose your own statistics. At http://splash.abc.net.au/statistics-game/#/ (viewed 19 February 2015)

designed to assist children and young people in years 5 to 8 to analyse data in order to understand important human rights issues in Australian society.

30. The ACT celebrated the tenth anniversary of the *Human Rights Act 2004* (ACT). To mark the occasion the ACT Human Rights Commission and the Australian National University jointly presented a symposium on the *Human Rights Act 2004* (ACT).[23] In Victoria, *the Charter of Human Rights and Responsibilities Act 2006* (Vic) is scheduled for a review after eight years of operation in 2015. ACHRA notes that a number of issues arising from the Charter's four year review remain outstanding. ACHRA calls on the Victorian Government to ensure that any future amendments to the Charter do not reduce human rights protections.

2.3 Equality before the law and non-discrimination

31. Numerous countries called upon Australia to intensify efforts to address the unacceptable level of disadvantage experienced by **Aboriginal and Torres Strait Islander peoples.**[24] Australia was requested to ensure the full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples* (the Declaration).[25]

32. During 2014 a series of consultations about giving effect to the Declaration were held with Aboriginal and Torres Strait Islander communities and organisations.[26] The *Declaration Dialogues* were conducted by the Commission in partnership with the National Congress of Australia's First Peoples. The *Declaration Dialogues* revealed that communities find the Declaration to be an empowering tool they can use to assert their rights in everyday life and that businesses are demonstrating their willingness and commitment to use the Declaration as a basis for their engagement with Aboriginal and Torres Strait Islander communities.[27]

33. ACHRA is concerned that the continuation of the important work of the National Congress of Australia's First Peoples has been threatened by budget cuts of $15 million.[28] Although the Australian Government continues to declare its support for the Declaration, progress to implement it has been slow.

34. ACHRA does note and commends the leading role played by the Australian Government at the World Conference on Indigenous Peoples in September 2014. The World Conference Outcomes Document commits Member States to develop, in consultation and cooperation with Indigenous peoples, national measures to achieve the ends of the Declaration.[29] Australia agreed to the Outcomes Document, which is a

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[23] ACT Human Rights Commission, Ten Years of the ACT Human Rights Act: Continuing the Dialogue Conference. At http://www.hrc.act.gov.au/humanrights/ (viewed 24 November 2014).

[24] See generally Recommendations 23, 24, 36-37, 53, 60, 72, 80, 90, 92, 101, 104-111, 114–120.

[25] Recommendations 106 and 107.

[26] Australian Human Rights Commission, Social Justice Report 2014, p 162. At https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014 (viewed 3 December 2014).

[27] Australian Human Rights Commission, Social Justice Report 2014, p 162. At https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014 (viewed 3 December 2014).

[28] Australian Government, Budget 2014-15: Budget Measures, Budget Paper No 2 (2014), p 185. At http://budget.gov.au/2014-15/content/bp2/download/BP2_consolidated.pdf (viewed 16 October 2014).

[29] Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, GA Res 66, UN Doc No A/69/L.1, 2014, paras 7-8. At http://wcip2014.org/wp-content/uploads/2014/09/N1453491-WCIP-FINAL-DOCUMENT-EN.pdf (viewed 25 November 2014).

collective commitment by Member States to focus action on the Declaration and Indigenous rights. ACHRA welcomes this significant commitment, however it notes that more work needs to be done to improve engagement and action to embed the Declaration in activities by all sectors of society including governments, civil society, the private sector, and by Aboriginal and Torres Strait Islander communities.

35. In particular, ACHRA calls for the development of a National Strategy to give effect to the Declaration and the inclusion of the Declaration in the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

36. Several countries called upon Australia to commit to the recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution.[30] ACHRA acknowledges that a number of steps have been taken towards achieving recognition of Aboriginal and Torres Strait Islander people in Australia's Constitution:

- An independent Expert Panel recommended a model for recognition to the Government in 2012
- In February 2013 the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed – this acknowledges that Aboriginal and Torres Strait Islander people are the first inhabitants of this nation and identifies a broad timeframe for the holding of the referendum to recognise this, and provide other protection, in the Constitution
- Funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.

37. ACHRA commends the government for these developments. However, ACHRA is concerned that the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) is due to sunset in March 2015 and the Australian Government has not finalised a model for constitutional change nor announced a timeframe for a referendum to occur. ACHRA calls on the Australian Government to finalise a model for recognition so that the process of building community understanding and support can occur.

38. ACHRA supports the work of the *Close the Gap Campaign for Indigenous Health Equality*.[31] On 12 February 2014, Prime Minister Abbott presented his first *Closing the Gap Prime Minister's Report* to the House of Representatives.[32] The report revealed that the targets to halve the gap in child mortality within a decade and to have 95 per cent of remote children enrolled in preschool are on track. Whilst Aboriginal and Torres Strait Islander life expectancy has modestly increased, there has been almost no progress in closing the life expectancy gap.[33] It should be noted that the current data represents changes occurring prior to the *Closing the Gap Strategies* having their full impact. ACHRA believes time must be allowed for improvements in life expectancy rates. Life expectancy is a summary measure of overall population health, and can only be expected to change at a slow pace. Echoing the campaign, ACHRA believes the persistence of life expectancy inequality demonstrates why the national effort to close the life expectancy gap is required, how much time is

[30] Recommendations 104, 105, 106 and 107.

[31] Close the Gap Campaign, Statement of Intent. At http://www.humanrights.gov.au/publications/closegap-indigenous-health-equality-summit-statement-intent (viewed 26 November 2014).

[32] Australian Government, Closing the Gap Prime Minister's Report 2014. At http://www.dpmc.gov.au/PUBLICATIONS/index.cfm (viewed 26 November 2014).

[33] Productivity Commission, Overcoming Indigenous Disadvantage: Key Indicators 2014. At http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2014 (viewed 4 December 2014).

required and why this task must be placed above politics and remain a constant across political cycles.

39. ACHRA welcomes the Australian Government's commitment to the National Aboriginal and Torres Strait Islander Health Plan 2013–2023 (Health Plan) launched in July 2013. ACHRA acknowledges and welcomes the work commenced by the Australian Government on an implementation plan for the Health Plan. Importantly, this work is being undertaken in partnership with Aboriginal and Torres Strait Islander leadership in the sector. ACHRA however remains concerned about ongoing and sustainable nationally coordinated funding. The National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes expired in 2013. In December 2013 the Council of Australian Governments announced it would not seek to renew the agreement and would focus efforts on bilateral agreements with each jurisdiction. This approach could potentially fragment the *Closing the Gap Strategies* from a national to jurisdictional response. ACHRA calls on the Australian Government to retain its leadership position in working with state and territory governments to ensure that funding arrangements facilitate a nationally coordinated approach.

40. ACHRA notes that Aboriginal and Torres Strait Islander women are 45 times more likely to be victims of domestic and family violence[34] and 35 times more likely to be hospitalised as a result of violence-related assault than non-Indigenous women in Australia.[35] ACHRA considers that culturally appropriate and adequately funded prevention and support services are needed and supports the full engagement of Aboriginal and Torres Strait Islander women in designing and delivering these services.

41. Several countries raised the issue of disproportionate representation of Aboriginal and Torres Strait Islander peoples within the criminal justice system.[36] The overrepresentation of Aboriginal and Torres Strait Islander peoples as both victims and offenders in the criminal justice system remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians. ACHRA remains concerned about high and increasing incarceration rates of Aboriginal and Torres Strait Islander children and adults.

- Aboriginal and Torres Strait Islander peoples are currently imprisoned at a rate of 2208 per 100 000, which is over 11 times higher than the rate of imprisonment for non-Indigenous people[37]
- Aboriginal and Torres Strait Islander young people are currently imprisoned at a rate of 364.8 per 100 000, which is around 24 times higher than their non-Indigenous counterparts[38]

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[34] C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men', University of New South Wales Law Journal, (2005), p 242.

[35] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators (2009), p 26. At http://www.pc.gov.au/__data/assets/pdf_file/0003/90129/key-indicators-2009.pdf (viewed 8 January 2015).

[36] Recommendations 90, 92, 93 and 95.

[37] The rate of imprisonment for the general population rate of 188 per 100,000 (based on average daily imprisonment rate): Australian Bureau of Statistics (ABS), Corrective Services Australia June Quarter 2014, 4512.0 (September 2014). At http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0?OpenDocument (viewed 26 September 2014).

[38] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12. At

- Although Aboriginal and Torres Strait Islander Australians make up only 2.3 per cent of the adult population, they represent over a quarter (27.4 per cent) of the adult prison population as at 30 June 2013[39]
- The adult imprisonment rate for Aboriginal and Torres Strait Islander people has increased by 57.4 per cent since 2000[40]
- At 30 June 2013, the rate of imprisonment for Aboriginal and Torres Strait Islander males (3765.1 per 100 000 adult males) was more than 10 times the rate for Aboriginal and Torres Strait Islander females (365.9 per 100 000 adult females).[41] However, the female imprisonment rate is growing faster (a 73.7 per cent increase since 2000 compared with a 38.6 per cent increase for males)[42]
- The rate of imprisonment for Aboriginal and Torres Strait Islander women has grown by 58.6 per cent between 2000 and 2010.

42. ACHRA advocates that the solution to this issue lies in focusing on creating safer communities where violence is not tolerated, where victims have access to the entire spectrum of support services and where the emphasis is on the prevention of crime and violence occurring in the first place. To achieve this, ACHRA encourages the Australian Government to adopt justice reinvestment programs as well as justice targets and benchmarks. This approach looks beyond offenders, to the needs of victims and communities. A portion of the funds for imprisonment is diverted to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities, such as parenting programs, early education and care, youth mentoring, numeracy and literacy programs, training and employment pathways.

43. The Senate Legal and Constitutional Affairs Committee has recommended that the Australian Government should support justice reinvestment trials.[43] In particular, the Senate Committee has recommended that any trial should actively involve communities in the process, be conducted on the basis of rigorous justice mapping (the identification of place-based communities and of existing services and gaps in services required to reduce crime)

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http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014 (viewed 8 January 2015).

[39] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011, Productivity Commission (2011), p 4.132. At http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2011 (viewed 14 October 2014).

[40] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011, Productivity Commission (2011), p 4.132. At http://www.pc.gov.au/gsp/overcoming-indigenous-disadvantage/key-indicators-2011 (viewed 14 October 2014).

[41] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12.1 At http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014 (viewed 8 January 2015).

[42] Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2014, Productivity Commission (2014), p.4.12.1 At http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014 (viewed 8 January 2015).

[43] Senate Legal and Constitutional Affairs Committee, Value of a justice reinvestment approach to criminal justice in Australia (2013), p 124. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 8 January 2015).

over a minimum time frame beyond the electoral cycle and be subject to a robust evaluation process.[44]

44. ACHRA encourages the Australian Government to adopt justice reinvestment approaches and justice targets, such as a target to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander peoples. Adopting justice targets in line with existing strategies to address Indigenous disadvantage, such as through the *Close the Gap* campaign will provide additional visibility, clear benchmarks and targeted action to this area.

45. At a state level, the Victorian Equal Opportunity and Human Rights Commission completed research in 2013 which confirmed the compelling need for a more comprehensive and effective approach to reducing the increasing incarceration of Aboriginal and Torres Strait Islander women, noting that 80 per cent of Aboriginal and Torres Strait Islander women in Victorian prisons are mothers.[45] Accordingly, preventative and diversionary responses must be tailored to the particular needs and circumstances of these women.

46. ACHRA welcomes the inclusion of the development of diversionary options for Koori women as an action item under the Victorian Aboriginal Justice Agreement 3 (AJA3) and the re-affirmation of this commitment by the Victorian Government in 2012.[46] A residential diversion facility remains the highest priority for the Koori Caucus of the Aboriginal Justice Forum, Victoria.[47]

47. ACHRA notes the recent report by the Commission into the imprisonment of four Aboriginal men for a number of years in maximum security prisons in the NT, despite having existing cognitive disabilities and otherwise being found unfit to stand trial by reason of insanity. The Commonwealth were found to have failed to work with the NT government to provide adequate accommodation and support services. This also included a failure to act in line with a number of international law obligations, as articulated in the ICCPR and the *International Convention on the Elimination of All Forms of Racial Discrimination*. The Commission made a number of recommendations about ways to improve support services, access to advice and accommodation for people with cognitive disabilities when faced with a custodial sentence. The Commission's report also stressed the need for the Commonwealth to cooperate with the NT to develop model service system standards for the detention of people with a cognitive impairment.[48]

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[44] Senate Legal and Constitutional Affairs Committee, Value of a justice reinvestment approach to criminal justice in Australia (2013), p 125. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 8 January 2015).

[45] Victorian Equal Opportunity and Human Rights Commission, Unfinished business: Koori women and the justice system (2013). At http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/679-unfinished-business-koori-women-and-the-justice-system (viewed 14 October 2014).

[46] Department of Justice, Victorian Aboriginal Justice Agreement. At http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement (viewed 14 October 2014).

[47] The Aboriginal Justice Forum is a coordinating body made up of government agencies and the Aboriginal community, which meets regularly to oversee the implementation of the AJA3. The Koori Caucus of the Aboriginal Justice Forum is comprised of representatives of the Aboriginal community.

[48] Australian Human Rights Commission, President reports on KA, KB, KC and KD v Commonwealth (Department of Prime Minister and Cabinet, Department of Social Services, Attorney-General's Department) [2014] AusHRC 80. At https://www.humanrights.gov.au/news/media-releases/president-reports-ka-kb-kc-and-kd-v-commonwealth-department-prime-minister-and (viewed 5 December 2014).

48. **Gender equality** was raised by a number of countries. ACHRA commends the Australian Government for continued support of the National Women's Alliances.[49] In the area of pay and employment, ACHRA welcomes the *Workplace Gender Equality Act 2013* (Cth), and the recent release of the first benchmark data using the reporting framework.[50] The benchmark data identified the under-representation of women in management positions with women comprising only 26.1 per cent of management positions and 17.3 per cent of Chief Executive Officer positions. The data confirmed a gender pay gap for full-time remuneration of 19.9 per cent, and a gender pay gap of full-time total remuneration of 24.7 per cent. The data also identified gaps in the policies and strategies within workplaces to combat gender inequality. ACHRA welcomes the release of the data and emphasises the importance of maintaining the collection of workplace gender equality data.

49. Violence against women remains a critical and endemic issue in Australia with statistics suggesting that 41 per cent of women aged 18 and over have experienced violence in their lifetime. ACHRA notes that the Australian Government has taken significant positive steps to reduce violence against women in the last five years. In particular, through the National Plan to Reduce Violence against Women and their Children 2010–22 delivered through four three-year Action Plans. ACHRA welcomes the development of plans for every state and territory,[51] and initiatives under these plans such as a Crisis Support Scheme in the ACT.[52] ACHRA also welcomes the establishment of the National Foundation to Prevent Violence against Women and their Children (Ourwatch) and the establishment of Australia's National Research Organisation for Women's Safety.

50. In November 2011 the federal Parliament enacted the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) which seeks to respond more effectively to domestic and family violence and child abuse in the family law system. In June 2013, the federal Parliament enacted the *Fair Work Amendment Act 2013* (Cth) that expanded the right to request a flexible working arrangement to include those experiencing or supporting an immediate family or household member who is enduring violence in the family or household.

51. ACHRA remains concerned that a range of crisis and longer term support services for women experiencing violence continues to be under-resourced, and that there continue to be inadequate levels of specific support available for women living in rural and remote areas, women from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disabilities, as well as lesbian, trans and intersex women. ACHRA recommends an inclusive implementation of the National Plan to Reduce Violence against Women and their Children that accommodates all women's needs and

[49] The five National Women's Alliances (the Alliances) represent over 180 women's organisations. See Department of the Prime Minister and Cabinet, Engaging with Women's Organisations, https://www.dpmc.gov.au/office-women/wlds-and-grants/national-womens-alliances (viewed 8 January 2015).

[50] Workplace Gender Equality Agency, Australia's gender equality scorecard (November 2014), p 3. At https://www.wgea.gov.au/sites/default/files/2013-14_summary_report_website.pdf (viewed 5 December 2014).

[51] For example, the Action Plan to Address Violence against Women and Children 2012-2015 by the Victorian Government. Victorian Government, Victoria's Action Plan to Address Violence against Women and Children 2012-2015 (2012). At http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/women/action-plan-to-address-violence-against-women-and-children (viewed 10 October 2014).

[52] A Morozow, 'ACT women with disabilities offered way to escape domestic violence' (ABC News, 5 August 2015). At http://www.abc.net.au/news/2014-08-05/new-service-for-women-with-disabilities/5650490 (viewed 13 October 2014).

includes adequate, sustainable funding for specific programs and services, including prevention programs, critical response services, accommodation services and legal services.

52. ACHRA welcomes continued periodic data collection, including regular prevalence surveys such as the Australian Bureau of Statistics' *Personal Safety Survey* and the *National Community Attitudes to Violence Against Women Survey*, and notes that cross-jurisdictional data is essential to inform public policy responses to violence against women. ACHRA notes however the limited available data on the experiences of violence of specific groups of women, including culturally and linguistically diverse women, Aboriginal and Torres Strait Islander women, women with disabilities and lesbian, trans and intersex women, and recommends addressing this gap as a matter of priority.

53. ACHRA remains concerned at the prevalence of discrimination in the workplace, including discrimination on the basis of pregnancy, parental leave and return to work. The recent National Review on discrimination in the workplace related to pregnancy, parental leave and return to work found that one in two women reported that they had experienced these forms of discrimination.[53]

54. ACHRA also remains concerned about the significant gap in women's retirement savings with women on average retiring with half the retirement savings of men. ACHRA notes that the retirement savings pay gap is caused by a range of factors including the gender pay gap, discrimination in the workplace, the disproportionate amount of unpaid care work carried out by women, and that women live longer. ACHRA urges the Australian Government to examine a range of options for addressing this issue such as those outlined in the Commission's *Investing in Care* report.[54]

55. ACHRA acknowledges the commitment of the senior leadership of the Australian Defence Force to cultural reform including its efforts towards ensuring that the organisation is diverse and inclusive. ACHRA also commends Victoria Police for recently commissioning an independent review into sex discrimination and sexual harassment, including predatory behaviour, amongst Victoria Police personnel.

56. Several countries posed questions on Australia's progress in protecting and promoting the **rights of the child**. ACHRA is disappointed to note that the Australian Government has not yet formed a formal position on the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPCP)* which establishes a communications procedure. ACHRA encourages the Australian Government to develop a formal view on the OPCP as a matter of priority.

57. The second statutory report of the National Children's Commissioner investigates how the human rights of children and young people engaging in intentional self-harm with and without suicidal intent can be better protected. The report's primary finding is that too much continues to be unknown and this is impeding the prediction and prevention of injury and death resulting from intentional self-harm, with or without suicidal intent, in children and young people. The National Children's Commissioner makes four recommendations that provide direction for moving forward.

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[53] Australian Human Rights Commission, Supporting Working Parents: Pregnancy and Return to Work National Review – Report (2014), p 8. At https://www.humanrights.gov.au/publications/supporting-working-parents-pregnancy-and-return-work-national-review-report (viewed 10 December 2014).

[54] Australian Human Rights Commission, Investing in Care: Recognising and valuing those who care. Volume 1: Research Report (2013), pp 10-15. At https://www.humanrights.gov.au/sites/default/files/UnpaidCaringVolume1_2013.pdf (viewed 5 December 2014).

58. ACHRA welcomes the progress under the National Framework for Protecting Australia's Children 2009–2020 and its third Three-Year Action Plan. ACHRA also welcomes the two year extension of time granted to the Royal Commission to investigate Institutional Responses to Child Sexual Abuse.[55]

59. ACHRA welcomes the appointment in 2013 of Victoria's first Commissioner for Aboriginal Children and Youth. The Commissioner will oversee a five-year plan for Aboriginal children in out-of-home care, and provide advice to government and service providers about policies and practices that promote the safety and well-being of Aboriginal children. ACHRA also welcomes the commencement of an inquiry in 2014 by the Victorian Commission for Children and Young People into the adequacy of the provision of services to children and young people who have been subjected to sexual exploitation or sexual abuse whilst residing in state-funded residential care.[56]

60. Initiatives that strengthen the **rights of older persons** in Australia have continued. ACHRA welcomes the continued implementation of the 2013 reforms to the Australian aged care system. The ten year reform program aims to create a more flexible and consumer focussed system aimed at providing greater control and choice of aged care services.

61. Australian workforce participation rates amongst older people when compared with other OECD countries remain low. ACHRA welcomes the Commission's 2014 campaign, *The Power of Oldness*.[57] The campaign exposes the stark difference between the skills and strengths of mature workers with the discrimination they face when trying to gain or maintain jobs.

62. ACHRA notes the Australian Government's decisions to discontinue advisory panels on issues affecting older people including the Advisory Panel on Positive Ageing (APPA) and the Insurance Reform Advisory Group (IRAG). APPA's role was to lead a national dialogue on ageing issues. While the Panel continued its work with backing from the private sector, ACHRA is concerned that the Australian Government remains without comparable independent expert advice on issues affecting older Australians.

63. ACHRA also notes that IRAG had been working on limitations for older people in access to insurance, including limitations that apply to income protection insurance for older people. ACHRA welcomes the continued engagement between the Age Discrimination Commissioner, insurers and other stakeholders to facilitate better information and access to insurance products. This work is aligned with the Australian Law Reform Commission's recommendation for the Commission to undertake work on the insurance exception in the *Age Discrimination Act 2004* (Cth).

64. ACHRA urges the Australian Government to support the drafting of a Convention on the Rights of Older Persons. The Australian Government has not yet expressed a position.

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[55] Attorney-General for Australia, Minister for the Arts and Minister for Social Services, 'Child Abuse Royal Commission granted a two year extension', (Media Release 2 September 2014). At http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/ThirdQuarter/2September2014-ChildAbuseRoyalCommissionGrantedATwoYearExtension.aspx (viewed 26 November 2014).

[56] Commission for Children and Young People, Inquiry into the adequacy of the provision of services to children and young people who have been subjected to sexual exploitation or sexual abuse whilst residing in residential care. At http://www.ccyp.vic.gov.au/ (viewed 8 December 2014).

[57] Australian Human Rights Commission, The Power of Oldness. At http://www.powerofoldness.com/ (viewed 19 February 2015).

65. Several countries made recommendations related to the **rights of people with disabilities.** As the 2013 UPR Progress Report noted, the National Disability Strategy 2010–2020 was formally endorsed by the Council of Australian Governments in 2011, and the first implementation plan *Laying the Groundwork 2011-2014* was included in the 2010–2020 Report to the Council of Australian Governments. ACHRA is concerned with the continued lack of implementation of the National Disability Strategy as a foundation to ensuring that the principles underpinning the *Convention on the Rights of Persons with Disabilities* are incorporated into policies and programs affecting people with disabilities, their families and their carers.

66. ACHRA welcomes the continued support and roll out of the National Disability Insurance Scheme (NDIS) by the Australian Government. The scheme is operating within budget, with $130.9 million of support being provided to people with disability in the first year of operation. $4.5 million was invested through the Sector Development Fund to assist individuals and service providers to transition from state-based models of support to the NDIS. The National Disability Insurance Agency has reported a 94 per cent rate of satisfaction amongst participants across the four trial sites that commenced roll out in July 2013. Personal increases in independence and participation have been highlighted by qualitative data.

67. ACHRA remains concerned that employment rates of people with disabilities are comparable with 1993 levels when the *Disability Discrimination Act 1992* (Cth) came into effect. Overall employment rates for people with disability remain low, with labour force participation at around 53 per cent, compared to 83 per cent for people without disability.[58] The rate of unemployment for people with disabilities also increased in 2012 from 7.8 per cent in 2009 to 9.4 per cent in 2012.[59] There has been a consistent decline in employment levels of people with disability in the Australian Public Service over the last 20 years from 5.8 per cent in 1992, to 3.7 per cent in 2001, to 3.1 per cent in 2014.[60]

68. ACHRA remains concerned at the ongoing barriers facing people with disabilities in accessing public transport. The final report from the 2012 Review of the Disability Standards for Accessible Public Transport has not yet been published. However, key recommendations in the draft concern the development of industry-specific guidelines, national compliance reporting and standards modernisation.[61] ACHRA continues to monitor progress through its involvement in the Accessible Public Transport National Advisory Committee.

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[58] Australian Bureau of Statistics (ABS), Disability, Ageing and Carers, Australia: Summary of Findings, 2012, 4430.0 (2012). At http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument (viewed 26 November 2014).

[59] Australian Bureau of Statistics (ABS), Disability, Ageing and Carers, Australia: Summary of Findings, 2012, 4430.0 (2012). At http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument (viewed 26 November 2014).

[60] Australian Public Service Commission, Workplace Diversity Report 2000–01 (2001) p 73. At http://www.apsc.gov.au/publications-and-media/print-only (viewed 23 October 2013); Australian Public Service Commission, State of the Service Report, State of the Services Series 2013–14 (2014) p 209. At http://www.apsc.gov.au/publications-and-media/current-publications/state-of-the-service/state-of-the-service-2013-14 (viewed 4 December 2014).

[61] Australian Government, Review of the Disability Standards for Accessible Public Transport 2002 – Draft Report, Department of Infrastructure and Regional Development (May 2014). At http://www.infrastructure.gov.au/transport/disabilities/review/2012.aspx (viewed 4 December 2014).

69. ACHRA notes with concern reports that the practice of involuntary sterilisation of children and adults with disabilities is continuing. ACHRA also notes the persistence of violence against women with disabilities. ACHRA encourages the Australian Government to take note of and implement the recommendations in the Concluding Observations on Australia by the United Nations Committee Against Torture on this issue.[62]

70. Access to justice for people with disabilities continues to present significant challenges. The Commission's 2014 report, *Equal Before the Law*, expressed concerns about access to justice in the criminal justice system for people with disabilities.[63] The report found that necessary supports and adjustments for people with disabilities were frequently not provided in the criminal justice system. The report emphasised the need for Australian jurisdictions to develop a Disability Justice Strategy to address barriers and gaps in access to justice for people with disabilities.[64] ACHRA notes that South Australia has developed a Disability Justice Plan.[65] In the ACT, the Disability and Community Services Commissioner and the Human Rights and Discrimination Commissioner have proposed that the ACT Government adopt a Disability Justice Plan. In Tasmania, discussions have begun on the development of a Disability Justice Plan.

71. The Victorian Equal Opportunity and Human Rights Commission has also recently completed research which examines whether police services are delivered on an equal footing for people with disabilities who are victims of crime, compared to those without disability. The research found that people with disabilities face significant and multifaceted barriers when it comes to reporting crime to police, and raises the need for better coordination and governance across and within services' systems.[66]

72. ACHRA is also concerned about cases of indefinite detention of people with a cognitive impairment. In some Australian jurisdictions, when people with cognitive impairment are found to be unfit to plead to criminal charges, they become subject to mental health legislation.[67] The Commission has previously expressed serious concern

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[62] United Nations Committee Against Torture, Concluding observations on the fourth and fifth periodic reports of Australia – Advanced Unedited Version. At http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AUS/CAT_C_AUS_CO_4-5_18888_E.pdf (viewed 5 December 2014).

[63] Australian Human Rights Commission, Equal Before the Law. At http://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law (viewed 19 February 2015)

[64] Australian Human Rights Commission, Equal before the law: Towards disability justice strategies (February 2014), p 11. At http://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf (viewed 13 October 2014).

[65] Attorney-General's Department, Disability Justice Plan 2014-2017. At http://www.agd.sa.gov.au/initiatives/disability-justice-plan (viewed 13 October 2014).

[66] Victorian Equal Opportunity and Human Rights Commission, Beyond Doubt: the Experiences of People with Disabilities Reporting Crime (2014). At http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime (viewed 14 October 2014).

[67] Detention can occur in prisons in Western Australia under the Criminal Law (Mentally Impaired Accused) Act 1996 (WA) and in the Northern Territory under the Criminal Code Act 1983 (NT), Part IIA. Detention occurs in psychiatric hospitals in Queensland under the Mental Health Act 2000 (Qld) and the Forensic Disability Act 2011 (Qld) and in Tasmania under the Tasmania Criminal Justice (Mental Impairment) Act 1999 (Tas).

about the cases of Marlon Noble and Christopher Leo.[68] Both of these men have been held in indefinite detention. Marlon Noble, prior to his release was in prison for 10 years without being tried or convicted of any crime.[69]

73. ACHRA welcomes the Australian Law Reform Commission's inquiry report into *Equality, Capacity and Disability in Commonwealth Laws* and notes that the report recommends significant changes to individual decision-making at the Commonwealth and state and territory level. These changes include that individual decision-making should be guided by a set of National Decision-Making Principles and Guidelines to ensure that supported decision-making is encouraged, representative decision-makers are appointed only as a last resort, and the will, preferences and rights of persons direct decisions that affect their lives.[70] ACHRA encourages the Australian Government to accept the recommendations of the inquiry. ACHRA also encourages the Australian Government to work with state and territory governments to implement the recommended reforms at the state and territory level.

74. Several countries raised questions concerning the **rights of people who are lesbian, gay, bisexual, trans, gender diverse and intersex (LGBTI).** ACHRA welcomes the consultation conducted by the national Human Rights Commissioner to explore the key rights issues affecting LGBTI people in Australia. These consultations will be conducted through an online survey and email submission process. The online consultation period will be supported by a number of targeted meetings and community forums with LGBTI groups, organisations and individuals across the country. The outcomes of this process will inform the work of the Commissioner in the area of Sexual Orientation, Gender Identity and Intersex (SOGII) Rights over his tenure as Human Rights Commissioner.

75. ACHRA also welcomed the launch of *Sogi's Story* at the Commission.[71] *Sogi's Story* is an educational resource pack which has been developed with and for African national human rights institutions, civil society organisations and local community groups to encourage learning and awareness of SOGII rights.

76. In 2013, the Australian Government passed the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) which has introduced new grounds of discrimination into the *Sex Discrimination Act 1984* (Cth), in effect from 1 August 2013. ACHRA welcomed these amendments which prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in specific areas of public life, as set out in the *Sex Discrimination Act 1984* (Cth).[72]

77. However, in view of the High Court of Australia's unanimous decision that the ACT's *Marriage Equality (Same Sex) Act 2013* could not operate concurrently with the federal *Marriage Act 1961* (Cth) and was therefore invalid, ACHRA remains concerned

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[68] Australian Human Rights Commission, Social Justice and Native Title Report 2013 (2013), p. 55. At http://www.humanrights.gov.au/publications/aboriginal-and-torres-strait-islander-social-justice?source=our-work (viewed 14 October 2014).; Australian Human Rights Commission, Equal before the law: Towards disability justice strategies (February 2014), pp 12-13. At http://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf (viewed 13 October 2014).

[69] Australian Human Rights Commission, Twenty Years: Twenty Stories: Presumed Guilty. At http://www.humanrights.gov.au/twentystories/videos.html (viewed 14 October 2014).

[70] Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws, ALRC Report 124. At https://www.alrc.gov.au/publications/equality-capacity-disability-report-124 (viewed 26 November 2014).

[71] Australian Human Rights Commission, Sogi's Story. At http://www.humanrights.gov.au/news/stories/sogis-story (viewed 26 November, 2014).

[72] Sex Discrimination Act 1984 (Cth) ss 5A, 5B and 5C.

that the Australian Government continues to discriminate against same-sex couples and against people with diverse sex and genders by denying them the right to marry. ACHRA notes the Freedom to Marry Bill 2014 introduced into the Australian Senate on 26 November 2014. The Bill seeks to amend the *Marriage Act 1961* (Cth) to enable all Australians regardless of sex, sexual orientation, and gender identity to marry. The second reading debate on the Bill has been adjourned.

78. ACHRA welcomes the recent enactment of legislation in Victoria which provides a scheme for expunging old criminal convictions of Victorians who were prosecuted for engaging in consenting homosexual sex prior to 1981.[73] The legislation also amends Victoria's equal opportunity legislation to prohibit discrimination on the basis of an expunged homosexual conviction. ACHRA also welcomes the recent enactment of legislation in New South Wales, amending the *Criminal Records Act 1991* (NSW) to allow convictions for certain homosexual sexual conduct offences to become extinguished.

79. ACHRA is concerned about the issue of surgical or hormonal interventions on intersex infants.[74] The Tasmanian Anti-Discrimination Commissioner advised that whilst there are some instances where surgery or other medical intervention is necessary for the physical well-being of the child, a large number of interventions continue to be made to make children more typically male or female on the pretext that it will protect the child from future discrimination.

2.4 Migrants, refugees and asylum seekers

80. ACHRA remains deeply concerned about Australia's treatment of refugees and asylum seekers. The Australian Government accepted recommendations in the UPR process to limit the detention of asylum seekers to cases where it is strictly necessary,[75] and for the shortest time reasonably necessary.[76] ACHRA is concerned that the Australian Government continues to implement a policy of mandatory indefinite detention, under which broad categories of people are detained without individualised assessment or judicial review of the need for their detention. Large numbers of people are held in immigration detention within Australia and in offshore processing centres in Nauru and Manus Island, Papua New Guinea. As at 31 October 2014, 3084 people were held in immigration detention in Australia, with a further 2151 held in offshore processing centres.[77]

81. The majority of those detained are held in closed detention centres where they have no freedom of movement. The absence of a limit on the length of time a person can be detained under the *Migration Act 1958* (Cth) coupled with significant delays in the processing of claims has resulted in larger numbers of people being subject to prolonged detention. ACHRA is extremely concerned that over the last year the average period of detention has increased to 426 days as at 31 October 2014,[78] compared to an average period of detention of 139 days at 31 October 2013.[79]

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[73] Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014 (Vic).

[74] Australian Human Rights Commission Paper on surgery on intersex infants and human rights (July 2009). At: https://www.humanrights.gov.au/surgery-intersex-infants-and-human-rights-2009 (viewed 17 October 2014).

[75] Recommendation 123.

[76] Recommendation 127.

[77] Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2014 (2014) At http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf (viewed 24 November 2014).

[78] Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2014 (2014), p 10. At

82. Prolonged detention has detrimental impacts on mental health. ACHRA notes that despite the Australian Government's efforts to improve mental health support services, there have been numerous reports of self-harm incidents and attempted suicide amongst detained asylum seekers including children.[80] ACHRA urges the Australian Government to continue to increase the use of community arrangements as an alternative to detention in closed facilities.

83. ACHRA is disappointed by the lack of policy progress in relation to refugees who have received adverse security assessments and their children. Refugees subject to adverse security orders must remain in closed immigration detention facilities, unless a third country agrees to their resettlement. As this commonly does not occur, they face indefinite detention.

84. At present, there are approximately 40 refugees with adverse security assessments in immigration detention. Many have been in detention for over five years. ACHRA urges the Australian Government to consider alternatives to closed immigration detention for these people. Alternatives may include community detention or a bridging visa, if necessary with strict conditions to mitigate any identified risks an individual may pose. For example, conditions might include a requirement to reside at a specified location, curfews, travel restrictions, regular reporting and possibly even electronic monitoring. ACHRA welcomes the government's announcement that the Independent Reviewer for Adverse Security Assessments will continue in her role for a further two years. Continuation of this appointment is critical to ensuring security assessment transparency.[81]

85. ACHRA holds serious concerns for those who arrive to Australia by boat and are transferred to Nauru and Papua New Guinea for processing as a result. A number of Australia's international human rights obligations are potentially undermined by third country processing arrangements. ACHRA considers that existing arrangements do not contain adequate safeguards to protect asylum seekers from the risk of refoulement or arbitrary detention. ACHRA is particularly alarmed by the Australian Government's failure to exclude LGBTI asylum seekers from eligibility for transfer to Papua New Guinea, where homosexual activity is a criminal offence. ACHRA is concerned that asylum seekers transferred to Nauru and Papua New Guinea are subject to mandatory and indefinite

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http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf (viewed 24 November 2014).

[79] Department of Immigration and Border Protection Immigration Detention and Community Statistics Summary 31 October 2013 (2013), p 10: As at 31 October 2014 68.4% of those in detention have been detained for more than one year as at that date. In comparison, at the same time last year only 5% of people had been held for more than a year. At http://www.immi.gov.au/managing-australias-borders/detention/_pdf/immigration-detention-statistics-oct2013.pdf (viewed 24 November 2014).

[80] See Commonwealth Ombudsman, Suicide and Self-harm in the Immigration Detention Network (2013), part 6. At http://www.ombudsman.gov.au/files/suicide_and_self-harm_in_the_immigration_detention_network.pdf (viewed 4 December 2014); Australian Human Rights Commission, 'New Mothers on Suicide Watch on Christmas Island' (24 July 2014). At http://www.humanrights.gov.au/news/stories/new-mothers-suicide-watch-christmas-island (viewed 4 December 2014); L Elliott, Report to the Australian Human Rights Commission Inquiry into the Impact of Immigration Detention on Christmas Island: Christmas Island Visit, July 14th to July 17th 2014, p 13. At http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014/expert (viewed 4 December 2014).

[81] Attorney-General of Australia, Media Release - Continuation of the Office of the Independent Reviewer of Adverse Security Assessments, 11 December 2014. At http://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/FourthQuarter/11December2014-ContinuationoftheOfficeoftheIndependentReviewerofAdverseSecurityAssessments.aspx (viewed 19 February 2015).

detention in conditions that are reported to be harsh and well below international standards.[82]

86. ACHRA welcomed the Australian Government's decision to release children under the age of 10 who arrived prior to 19 July 2013 (and their families) from closed detention.[83] However, ACHRA is disappointed that the Government continues to pursue a policy of the mandatory detention of children who do not fall within this group, in contravention of Australia's commitment under the CRC to detain children only as a measure of last resort. ACHRA holds grave concerns for the 167 children held in conditions inappropriate for children at Nauru as at 31 October 2014.[84] During 2014, the Commission conducted a National Inquiry into Children in Immigration Detention to examine the impact of closed immigration detention on the health, well-being and development of children. The Inquiry report has been transmitted to the Australian Government and it is expected it will be tabled in the near future.

87. As noted above at paragraph 10, the Australian Government has introduced several bills to amend the *Migration Act 1958* (Cth).[85] ACHRA is gravely concerned that changes proposed by the legislation are inconsistent with Australia's obligations under several international human rights instruments, in particular Australia's obligation of non-refoulement.

88. The Australian Government accepted a number of recommendations to strengthen measures aimed at combatting racial discrimination against people from **culturally and linguistically diverse backgrounds**.[86] ACHRA welcomed the government's decision not to proceed with proposed amendments to the *Racial Discrimination Act 1975* (Cth) that would weaken existing legal protections against racial vilification and intimidation. ACHRA applauds the Australian Government for their continued support of the National Anti-Racism Partnership Strategy. The national anti-racism campaign central to the strategy, *Racism. It Stops With Me*, now has more than 320 organisational supporters.[87]

89. In 2012, an independent inquiry was conducted into the responsiveness of Australian Government services to the needs of Australians from culturally and linguistically diverse backgrounds.[88] In March 2013, the Australian Government expressed support for all of the

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[82] UNHCR, UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11–13 June 2013 (2013). At www.refworld.org/docid/51f61ed54.html (viewed 24 November 2014); UNHCR Mission to the Republic of Nauru, 3–5 December 2012 (2013). At www.refworld.org/docid/50cb24912.html (viewed 24 November 2014).

[83] Minister for Immigration and Border Protection, 'Getting children safely out of detention', (Media Release, 19 August 2014). At http://www.minister.immi.gov.au/media/sm/2014/sm217171.htm (viewed 24 November 2014).

[84] Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary 31 October 2014 (2014), p 3. At http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-oct2014.pdf (viewed 5 December 2014).

[85] Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013 (Cth), Migration Amendment (Protection and Other Measures) Bill 2014 (Cth), Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth), passed by both houses 26 November 2014, Migration and Maritime Powers Legislation (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth), passed by both houses 4 December 2014.

[86] Recommendations 59-64.

[87] Australian Human Rights Commission, Racism. It Stops With Me. At http://itstopswithme.humanrights.gov.au/ (viewed 19 February 2015)

[88] Australian Government, (2013), Access and Equity for a multicultural Australia: Inquiry into the responsiveness of Australian Government services to Australia's culturally and linguistically diverse

inquiry's recommendations aimed at improving the response of government services to the needs of people from culturally and linguistically diverse backgrounds.[89] ACHRA encourages the Australian Government to take action on the recommendations.

2.5 Right to life, liberty and security of the person

90. ACHRA has ongoing concerns about the criminal justice system in Australia.

91. ACHRA notes a modest national decline in the average number and rate of children in detention over the past year, continuing a four year trend.[90] ACHRA applauds the ACT, Victorian and Tasmanian governments for strengthening diversionary responses for youth. However, ACHRA notes that the decrease in overall rates of young people aged 10-17 in detention over the past four years is mainly due to a decrease in the sentenced detention rate. The rate of unsentenced detention has remained relatively stable over the past year, as it has over the past four years.[91] As at June 2014, 52 per cent of young people in detention were in unsentenced detention, awaiting a court appearance or sentencing.[92] ACHRA is seriously concerned that children are still being held in correctional centres with adults and that some legislatures are extending this practice.[93]

92. The need to improve systems of oversight over police use of force, misconduct and police related deaths was raised during Australia's UPR appearance. ACHRA welcomes the creation of the Independent Broad-based Anti-corruption Commission (IBAC) in Victoria. Since it became operational in 2013 the IBAC has dealt with matters in relation to allegations of misconduct against Victoria Police, including 79 independent reviews of Victoria Police investigations.[94] The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides a statutory right to protection from cruel, inhuman or degrading treatment by public authorities, including Victoria Police. However, ACHRA notes that in 2013 the Supreme Court of Victoria held that the Charter does not imply a right to an effective and independent investigation of allegations of cruel, inhuman and degrading treatment under the Charter.[95] ACHRA urges the ratification of the OPCAT as a means of implementing a right to an effective and independent investigation.

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population. At https://www.dss.gov.au/our-responsibilities/settlement-and-multicultural-affairs/programs-policy/access-and-equity/access-and-equity-inquiry (viewed 4 December 2014).

89 See Australian Government, Government Response to the Recommendations of the Access and Equity Inquiry (2013). At https://www.dss.gov.au/sites/default/files/files/settle/multicultural_australia/government-response.pdf (viewed 4 December 2014).

90 Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. vii. At http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675 (viewed 5 December 2014).

91 Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. vii. At http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675 (viewed 5 December 2014).

92 Australian Institute of Health and Welfare, Youth detention population in Australia 2014 (2014), p. 11. At http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675 (viewed 5 December 2014).

93 The Youth Justice Act 2005 (NT) has recently been amended to permit detainees younger than 15 to be transferred to a custodial correctional facility temporarily where there is 'no practical alternative'. See Youth Justice Act 2005 (NT), s 154(6).

94 Independent Broad-based Anti-corruption Commission Annual Report 2013-2014 (2014). At http://www.ibac.vic.gov.au/docs/default-source/ibac-annual-reports/web-pdf---ibac-annual-report-2013-14---20140926.pdf?sfvrsn=4 (viewed 5 December 2014).

95 Bare v Small [2013] VSC 129.

93. ACHRA holds concerns about overcrowding in prisons.[96] The Victorian Ombudsman has reported that Victorian prisons are overcrowded and that there is an increased likelihood of deaths and harm in custody.[97] ACHRA is concerned by the Victorian Government's abolition of the use of suspended sentences for all offences as of 1 September 2014.[98] It is also noted that the Tasmanian Government intends to implement a similar policy.[99] Research by the Victorian Auditor-General has shown that the abolition of suspended sentences has contributed to a growth in prisoner numbers in Victoria.[100] ACHRA is further concerned about a lack of improvement in practices to review and investigate deaths in custody.[101] While all deaths in custody are currently investigated by state coroners, it does not appear that any significant improvements to the system have been made. The Victorian Ombudsman has recently identified shortcomings in the system of review for the prison system in Victoria, finding that the body tasked with review of custodial services in Victoria, the Office of Correctional Services Review, lacks independence and transparency.[102]

94. ACHRA is disappointed to note that several Australian jurisdictions have retained or recently introduced legislation that requires mandatory minimum sentences to apply to certain offences.[103] ACHRA notes that mandatory minimum sentencing laws disproportionately affect children and Aboriginal and Torres Strait Islander peoples.[104]

95. ACHRA welcomed the creation of the position of Independent National Security Legislation Monitor (INSLM) in 2012. The annual reports to parliament of the INSLM have highlighted concerns about control orders, preventative detention orders, questioning and detention orders, and the need for enhancements to terrorism laws to address

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[96] Victorian Ombudsman, Investigation into Deaths and Harm in Custody (2014). At https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921 (viewed 5 December 2014).

[97] Victorian Ombudsman, Investigation into Deaths and Harm in Custody (2014), pp. 10, 27 and 28. At https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921 (viewed 5 December 2014).

[98] Premier of Victoria, 'All suspended sentences abolished from today', (Media Release, 1 September 2014). At http://archive.premier.vic.gov.au/2014/media-centre/media-releases/10823-all-suspended-sentences-abolished-from-today.html (viewed 5 December 2014).

[99] E Bevin, Plan to scrap suspended sentences in Tasmania to go ahead despite Risdon Prison capacity concerns, ABC News, 10 June 2014. At http://www.abc.net.au/news/2014-06-10/tasmanian-attorney-general-planning-to-scrap-suspended-sentences/5511766 (viewed 5 December 2014).

[100] Victorian Auditor-General, Prisoner Transportation (2014). At http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2013-14/20140611-prisoner-transport.aspx (viewed 5 December 2014).

[101] Recommendation 91.

[102] Victorian Ombudsman, Investigation into Deaths and Harm in Custody (2014), p 12.At https://www.ombudsman.vic.gov.au/getattachment/2998b6e6-491a-4dfe-b081-9d86fe4d4921 (viewed 5 December 2014).

[103] L Roth, 'Mandatory Sentencing Laws', NSW Parliamentary Research Service e-brief (2014). At http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Mandatorysentencinglaws/$File/mandatory+sentencing+laws.pdf (viewed 5 December 2014).

[104] Australian Human Rights Commission, Social Justice Report 2013 (2013), p 52-53. At https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2013 (viewed 14 October 2014); Australian Human Rights Commission, Children's Rights Report 2013 (2013), p 32. At https://www.humanrights.gov.au/publications/childrens-rights-report-2013 (viewed 14 October 2014); T Wilson, Queensland Law Society Mandatory Sentencing Policy Paper Launch (Speech delivered at Queensland Law Society, Brisbane, 4 April 2014). At https://www.humanrights.gov.au/news/speeches/queensland-law-society-mandatory-sentencing-policy-paper-launch (viewed 14 October 2014).

involvement of Australians in armed conflict abroad. ACHRA is concerned that many key recommendations in the reports have not been implemented. ACHRA is pleased that the government has recently announced a new appointment to the position of INSLM, which had been vacant since 21 April 2014.[105]

96. ACHRA holds concerns about national security laws introduced to parliament in 2014, three of which have been enacted.[106] ACHRA is concerned that elements of these laws will infringe upon human rights in a manner that is disproportionate to the legitimate aim of protecting the public against terrorism. The Commission has further detailed these concerns in its submissions to parliamentary inquiries examining the bills.[107]

III. Key national priorities, initiatives and commitments

97. The Commission is an 'A status' national human rights institution established and operating in full compliance with the Paris Principles. The sufficiency of funding and staffing for the Commission was called into question during Australia's UPR. ACHRA encourages the Australian Government, through the regular federal budget process, to ensure the Commission continues to operate as an effective 'A status' national human rights institution. ACHRA reiterates its note that the Commission's functions could be enhanced, through legislative amendment, to provide a clearer focus on individual liberties, fundamental freedoms and human rights reflected in the common law.

98. As Australia approaches its second cycle review, ACHRA commends the Australian Government for conducting a consultation process with civil society through the NGO Forum. ACHRA encourages the government to continue consultation and engagement with civil society during the drafting of the Australian Government report to the Human Rights Council UPR.

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[105] Prime Minister of Australia, Media Release - Appointment of Independent National Security Legislation Monitor, 7 December 2014. At https://www.pm.gov.au/media/2014-12-07/appointment-independent-national-security-legislation-monitor (viewed 19 February 2015).

[106] National Security Legislation Amendment Act (No.1) 2014 (Cth); Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014 (Cth); Counter-Terrorism Legislation Amendment Bill (No.1) (passed both houses on 2 December); Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014.

[107] See Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the National Security Legislation Amendment Bill (No. 1) 2014 (21 August 2014). At http://www.humanrights.gov.au/submissions/submission-inquiry-national-security-legislation-amendment-bill-no-1-2014 (viewed 4 December 2014); Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (2 October 2014). At http://www.humanrights.gov.au/submissions/inquiry-counter-terrorism-legislation-amendment-foreign-fighters-bill-2014 (viewed 4 December 2014); Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 (11 November 2014). At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Amendment_Bill/Submissions (viewed 4 December 2014).

Appendix I

Calendar of upcoming key UN treaty dates

Treaty	*Key dates*
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Australia appeared before the committee in November 2014 Next report due November 2018
Convention on the Rights of Persons with Disabilities (CRPD)	Next report due August 2018
Convention on the Elimination of Racial Discrimination (CERD)	The report was due October 2012. A combined 18–20th periodic report will be transmitted in 2015
International Covenant on Civil and Political Rights (ICCPR)	Next report was due December 2013
International Covenant on Economic Social and Cultural Rights (ICESCR)	Next report was due June 2014
Convention on the Elimination of Discrimination Against Women (CEDAW)	Next report was due July 2014
Convention on the Rights of the Child (CRC)	Next report due January 2018

Appendix II

Implementation status of UPR recommendations

No	*Recommendation*	*Response*	*Implementation*
1-4, 6	Ratify the OPCAT (Republic of Moldova, Azerbaijan, Maldives, New Zealand, Denmark)	Accepted	Not implemented
3-5	Establish a National Preventative Mechanism (Maldives, New Zealand, Mexico)	Accepted	Not implemented
7	Accede to the remaining core human rights instruments to which it is yet to become a party (Thailand)	Accepted-in-part	Not implemented
7-9	Ratify or consider ratifying CED (Thailand, France, Argentina)	Accepted-in-part	Not implemented
9	Study the possibility of signing and ratifying CED and ICRMW (Argentina)	Accepted-in-part	Not implemented
10	Consider acceding to ICRMW; ratify ICRMW; engage in consultations with a view to possible accession to ICRMW; ratify ICRMW (Algeria, Bolivia, Turkey, Philippines, Bosnia and Herzegovina)	Rejected	
11	Ratify ILO Convention No. 169 (Bolivia)	Accepted-in-part	Not implemented
12	Consider ratifying ILO Convention No. 169 (Norway)	Accepted	Not implemented
13, 16	Withdraw reservations to CRC (Hungary, Denmark)	Accepted-in-part	Not implemented
14	Consider withdrawing reservations to article 4 (a) of ICERD (Republic of Korea)	Accepted	Not implemented
15-16	Withdraw reservations to article 4 (a) of ICERD (South Africa, Denmark)	Accepted-in-part	Not implemented

No	*Recommendation*	*Response*	*Implementation*
16	Withdraw reservations to ICERD, CEDAW, ICCPR and CRC (Denmark)	Accepted-in-part	Not implemented
17	Bring its legislation and practices into line with international obligations (Sweden)	Accepted	Partly implemented
18, 19, 21	Incorporate human rights obligations into domestic law (France, Jordan, Timor-Leste)	Accepted-in-part	Partly implemented
20	Continue efforts in strengthening mechanisms for the effective incorporation of international human rights obligations and standards into its domestic legislation (Argentina)	Accepted	Partly implemented
22	Consider adopting or adopt a comprehensive Human Rights Act (Canada, Ukraine, Russian Federation, Norway)	Rejected	
23	Focus on nationwide enforcement of its existing anti-discrimination law (United States)	Accepted	Partly implemented
24	Fully implement the Racial Discrimination Act and the revision of federal laws to be compatible with the United Nations Declaration on the Rights of Indigenous Peoples (Norway)	Accepted-in-part	Partly implemented
25	Consider re-instating the Racial Discrimination Act into the Northern Territory Emergency Response and other subsequent arrangements (Canada)	Accepted	Partly implemented
27	Facilitate the provision of sufficient funding and staffing for the Australian Human Rights Commission and different commissioners (Bolivia)	Accepted	Partly implemented
28	Establish a National Children's Commissioner (New Zealand)	Accepted-in-part	Implemented
29	Consider establishing an independent commissioner for child rights (Poland)	Accepted	Implemented

No	*Recommendation*	*Response*	*Implementation*
30	Continue measures for the adoption of the new National Action Plan on Human Rights (Azerbaijan)	Accepted	Partly implemented
31	Adopt a rights-based approach to climate change policy at home and abroad, including by reducing greenhouse gas emissions to safe levels that are consistent with the full enjoyment of human rights (Maldives)	Accepted-in-part	Partly implemented
32-33	Develop a comprehensive poverty reduction and social inclusion strategy, which would integrate economic, social and cultural rights (Ghana, Pakistan)	Accepted-in-part	Partly implemented
34	Adopt the necessary legislation to ensure that no one is extradited to a State where they would be in danger of the death penalty (France)	Accepted	Implemented
35	Follow-up on the implementation of recommendations of human rights mechanisms (Austria)	Accepted	Partly implemented
36	Consider implementing the recommendations of human rights treaty bodies and special procedures concerning indigenous people (Jordan)	Accepted	Partly implemented
37	Implement the recommendations made by the United Nations Special Rapporteur on the rights of indigenous people after his visit in 2009 (Norway)	Accepted-in-part	Partly implemented
38	Consider implementing the recommendations of UNHCR, human rights treaty bodies and special procedures with respect to asylum-seekers and irregular immigrants especially children (Jordan)	Accepted	Not implemented
39	Abolish non-therapeutic sterilisation without consent (Denmark, United Kingdom, Belgium, Germany)	Accepted-in-part	Not implemented

No	*Recommendation*	*Response*	*Implementation*
40, 41	Continue pursuance of the draft National Disability Strategy; complete a general framework of measures to ensure equality of chances for people with disabilities (Botswana, Republic of Moldova)	Accepted	Implemented
42	Ensure efforts to harmonize and consolidate Commonwealth anti-discrimination laws address all prohibited grounds of discrimination and promote substantive equality (United Kingdom)	Accepted	Not implemented
43	Grant comprehensive protection to rights of equality in federal law (Pakistan, India)	Accepted-in-part	Partly implemented
44	Enact comprehensive legislation which prohibits discrimination on all grounds to ensure the full enjoyment of all human rights by every member of society (South Africa)	Accepted	Partly implemented
45, 66	Continue its efforts to harmonize and consolidate its domestic legislation against all forms of discrimination (Argentina, Colombia)	Accepted	Not implemented
46	Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular, children, persons in detention and persons with disabilities (Morocco)	Accepted	Partly implemented
48	Put an end, in practice and in law, to systematic discrimination on the basis of race in particular against women of certain vulnerable groups (Islamic Republic of Iran)	Accepted	Partly implemented
49	Further ensure that everyone is entitled to equal respect and to a fair participation with full enjoyment of equal rights and opportunities in economic, political, social and cultural developments as incorporated in the laws and plans of action (Cambodia)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
50	Take appropriate measures to reduce the development gap and social disparities so as to enhance the full enjoyment of all human rights for all Australian people, especially in the areas of economic, cultural and social rights (Viet Nam)	Accepted	Partly implemented
51, 53-54	Intensify its efforts to further combat gender discrimination (Norway, South Africa, Japan)	Accepted	Partly implemented
52	Strengthen the Sex Discrimination Act as indicated in the national report, and consider the adoption of temporary special measures (Israel)	Accepted	Not implemented
55	Adopt targets of 40 per cent representation of women on public and private sector boards (Norway)	Accepted-in-part	Partly implemented
56	Remain steadfast in pursuing its policies towards gender equality, in particular through its Fair Work Act (Botswana)	Accepted	Partly implemented
57	Further strengthen its efforts to promote equality, non-discrimination and tolerance through the monitoring of racially motivated violence (Thailand)	Accepted	Partly implemented
57-58	Step up measures, such as human rights education in schools, so as to promote a more tolerant and inclusive society (Thailand, Japan)	Accepted	Partly implemented
59-64	Strengthen further the measures to combat discrimination against minority communities and continue its efforts to promote multicultural and racial tolerance (Algeria, Sweden, Singapore, Malaysia, Morocco, Yemen)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
65	Implement additional measures to combat discrimination and violence against the Arab population and Australian Muslims, against recently arrived migrants and also foreign students (essentially coming from India) (Russian Federation)	Accepted	Partly implemented
66-68	Move forward with the promulgation of laws protecting persons against discrimination on the grounds of sexual orientation and/or gender (Columbia, Switzerland, New Zealand)	Accepted	Implemented
69	Take measures to ensure consistency and equality across individual States in recognizing same-sex relationships (United Kingdom)	Accepted	Implemented
70	Amend the Marriage Act to allow same-sex partners to marry and to recognize same-sex marriages from overseas (Norway)	Rejected	
71	Enact legislation to ensure the humane treatment of prisoners (Hungary)	Accepted	Not implemented
47, 72	Strengthen efforts to combat family violence against women and children (Viet Nam, United States)	Accepted	Partly implemented
73-74	Adapt its legislation to ensure greater security for women and children (Islamic Republic of Iran, Switzerland)	Accepted	Partly implemented
75	Introduce a full prohibition of corporal punishment within the family in all states and territories (Russian Federation)	Rejected	
76-81	Advance and accelerate implementation of the National Plan to Reduce Violence against Women and their Children (Azerbaijan, Canada, Switzerland, Norway, Mexico, Philippines)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
82	Ensure that all victims of violence have access to counselling and assistance with recovery (Hungary)	Accepted	Partly implemented
83	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner (Thailand)	Accepted	Partly implemented
84	Strengthen further its commitment to the Bali process as the principal mechanism in the region which deals with people smuggling and trafficking (Indonesia)	Accepted	Implemented
85	Consider using the OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking as a guide in its anti-trafficking measures (Philippines)	Accepted	Implemented
86	Increase its efforts to fight human trafficking (Azerbaijan)	Accepted	Partly implemented
87	Increase efforts to criminally prosecute trafficking offenders (United States)	Accepted	Implemented
88	Take effective legal measures to prohibit the use of excessive force and the use of "Tasers" by the police against various groups of peoples (Islamic Republic of Iran)	Accepted-in-part	Not implemented
89	Further improve the administration of justice and the rule of law including by setting up appropriate mechanisms in order to ensure adequate and independent investigation of police use of force, police misconduct and police-related deaths (Malaysia)	Accepted	Not implemented
90	Implement specific steps to combat the high level of deaths of indigenous persons in places of detention (Russian Federation)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
91	Introduce a requirement that all deaths in custody be reviewed and investigated by independent bodies tasked with considering prevention of deaths and implement the recommendations of Coronial and other investigations and enquiries (New Zealand)	Accepted	Partly implemented
92	Increase the provision of legal advice to indigenous peoples with due translation services reaching especially indigenous women of the most remote communities (Bolivia)	Accepted	Not implemented
93	Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islander communities in the prison population (Austria)	Accepted	Partly implemented
94	Examine possibilities to increase the use of non-custodial measures (Austria)	Accepted	Partly implemented
95	Enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and representatives of the law enforcement officials and enhance the training of those officials with respect to cultural specificities of the above communities (Austria)	Accepted	Partly implemented
96	Improve the human rights elements of its training for law enforcement personnel (United States)	Accepted	Partly implemented
97	Establish a National Compensation Tribunal to provide compensation to Aboriginal and Torres Strait Islander people that are negatively affected by the assimilation policy (Slovenia)	Rejected	
98	Take regular measures to prevent hate speech, including prompt legal action against those who incite discrimination or violence motivated by racial, ethnic or religious reasons (Brazil)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
99	Develop a national pay strategy to monitor pay gaps mechanisms and establish a comprehensive childcare policy, as recommended by the Committee on the Elimination of All Forms of Discrimination against Women (Israel)	Accepted-in-part	Partly implemented
100	Remove, in law and in practice, restrictions on the rights of workers to strike, as recommended by the Committee on Economic, Social and Cultural Rights (Israel)	Accepted-in-part	Not implemented
101	Step up efforts to ensure that people living in the remote and rural areas, in particular the indigenous peoples, receive adequate support services relating to accommodation and all aspects of health and education (Malaysia)	Accepted	Partly implemented
102	Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life (United Kingdom)	Accepted-in-part	Partly implemented
103	Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people (Slovenia)	Accepted-in-part	Partly implemented
104, 105, 107	Continue the process of constitutional reform in order to better recognize the rights of indigenous peoples (France, Columbia, Guatemala)	Accepted	Partly implemented
106	Revise its Constitution, legislation, public policies and programmes for implementation of the United Nations Declaration of the Rights of Indigenous Peoples (Bolivia, Ghana, Hungary, Denmark)	Accepted-in-part	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
108	Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples (Bolivia)	Accepted	Partly implemented
26, 109, 111-113	Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in processes or decision-making that may affect their interests (Slovenia, Bolivia, Mexico, Indonesia, Austria)	Accepted	Not implemented
110	Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies (Bosnia and Herzegovina)	Accepted	Not implemented
114-117	Continue and/or intensify efforts to narrow the gap in opportunities and life outcomes between indigenous and non-indigenous Australians (France, Singapore, Thailand, Jordan)	Accepted	Partly implemented
118	Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples and if necessary correct these actions (Belgium)	Accepted	Partly implemented
119	Take immediate legal measures to remove restrictions against access of indigenous women and children to appropriate health and education services and employment opportunities (Islamic Republic of Iran)	Accepted	Partly implemented
120	Continue efforts to increase the representation of indigenous women in decision-making posts (Morocco)	Accepted	Partly implemented
121	Safeguard the rights of refugees and asylum-seekers (Sweden)	Accepted	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
122-123	Ensure the processing of asylum-seekers' claims in accordance with the United Nations Refugee Convention (Slovenia, Norway)	Accepted	Partly implemented
124-125	Ensure in its domestic law that the principle of non-refoulement is respected when proceeding with the return of asylum-seekers to countries (Slovenia, Ghana)	Accepted	Not implemented
126	Repeal the provisions of the Migration Act 1958 relating to the mandatory detention; revise the Migration Law of 1958 so that federal initiatives do not penalize foreign migrants in an irregular situation (Pakistan, Guatemala)	Rejected	
123, 127	Review its mandatory detention regime of asylum-seekers, limiting detention to when strictly necessary (Norway) or the shortest time reasonably necessary (Ghana)	Accepted	Not implemented
128	Address the issue of children in immigration detention in a comprehensive manner (Philippines)	Accepted	Not implemented
129	Ensure that no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children (Brazil)	Accepted-in-part	Not implemented
130	Take efficient measures to improve the harsh conditions of custody centres in particular for minorities, migrants and asylum-seekers (Islamic Republic of Iran)	Accepted	Not implemented
131	Consider alternatives to the detention of irregular migrants and asylum-seekers, limit the length of detentions, ensure access to legal and health assistance and uphold its obligations under the Vienna Convention on Consular Relations (Brazil)	Accepted-in-part	Partly implemented

No	*Recommendation*	*Response*	*Implementation*
132	Do not detain migrants other than in exceptional cases, limit this detention to six months and bring detention conditions into line with international standards in the field of human rights (Switzerland)	Rejected	
133	Ensure all irregular migrants have equal access to and protection under Australian law (Timor-Leste)	Rejected	
134	Continue to work and coordinate with countries in the region to strengthen the regional framework to deal with irregular migration and human trafficking in a comprehensive and sustainable manner, bearing in mind international human rights and humanitarian principles (Thailand)	Accepted	Partly implemented
135	Protect Official Development Assistance from budgetary cuts in the context of the international crisis and make every effort to bring it to the internationally agreed target of 0.7 per cent of GDP (Algeria)	Accepted	Not implemented
136	Investigate allegations of torture in the context of counter-terrorism measures, give publicity to the findings, bring perpetrators to justice and provide reparation to the victims (Brazil)	Accepted	Implemented
137-140	Review the compatibility of its legislative framework to combat terrorism with its international obligations in the field of human rights and remedy any possible gaps (Russian Federation, Belgium, Republic of Moldova, Switzerland)	Accepted	Partly implemented
141	Continue to share its experiences for the promotion of human rights in the region and the world (Lao People's Democratic Republic)	Accepted	Implemented

No	*Recommendation*	*Response*	*Implementation*
142	Actively continue to implement the best practice and policy for the promotion and protection of the rights and living conditions, and to narrow the gap in living standards in favour of the vulnerable groups in the country (Lao People's Democratic Republic)	Accepted	Partly implemented
143	Continue the consultation with civil society in a follow-up to its universal periodic review (Poland)	Accepted	Implemented
144	Continue to promote and protect human rights internationally to enhance human rights capacity regionally across the Asia-Pacific and globally through the AusAID programme (Cambodia)	Accepted	Partly implemented
145	Continue its efforts for the promotion and protection of human rights in the world and in their country (Chad)	Accepted	Partly implemented

United Nations A/HRC/28/NI/2

General Assembly

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Human Rights Council
Twenty-eight session
Agenda item 7
Human rights situation in Palestine and other Occupied Arab territories

Information presented by the Palestinian Independent Commission for Human Rights*.

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Palestinian Independent Commission for Human Rights**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

[English only]

Submission by the Palestinian Independent Commission for Human Rights

The Right to Movement and Travel in Light of the Ongoing Blockade of the Gaza Strip

The Israeli Occupying Forces IOF has continued with the policy of collective punishment and violations of human rights in the Gaza Strip. In July 2014, The IOF forces launched the war on the Gaza Strip and committed violations that amounted to war crimes. This year has witnessed the worst violations committed against Palestinian public freedoms and right to movement and travel, which is a fundamental human right and a crucial norm according to international law. While it cannot be denied under any pretext, the siege which has been imposed on the Gaza Strip since mid-June 2007 by Israel undermines this right to movement and travel. The violations against freedom of movement and travel for the Palestinians in the Gaza Strip are still ongoing, including on the border crossings which has further exacerbated their suffering.

Israel has imposed these restrictions as part of its collective punishment policy in flagrant violation of the right to movement and travel which is enshrined in all international conventions of human rights, mainly the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which the State of Palestine joined on the 2nd of April 2014. The accession of the State of Palestine to these conventions requires from the international community, mainly the United Nations, to take necessary steps to fulfill their legal obligations and apply pressure on Israel to lift the siege and ensure the right to movement and travel as well as the right to leave the country and return to it freely with no restrictions in conformity with the international conventions of human rights.

The IOFs systematic policy of restricting the freedom of movement and travel for the Palestinians through Beit-Hanun\Erez Crossing constitutes grave breaches of the agreements signed with the Palestinians that requires Israel, as the occupying power, to handle the West Bank and the Gaza Strip as one geographical unit and to ensure freedom of movement of persons and goods through a safe passage.

The ongoing siege on the Gaza Strip undermines the humanitarian and living conditions of about 1.8 million Palestinian civilians. It has aggravated the status of human rights, mainly the right to movement and travel from and to the Gaza Strip. The crisis in the Gaza Strip was further exacerbated due to the closure of the border crossings, the reduction of job opportunities and restriction on livelihood. It has restricted Palestinian civilians to access health-care centers, education, work, housing, decent life and security services. Moreover, it has affected the social life of the Palestinian citizens in the Gaza Strip in a way that undermines their ability to enjoy a secure future.

Though the truce agreement signed between Israel and the Palestinians in Cairo on 26th of August 2014, it provided for an immediate easing of Israel's blockade of the border crossings into Gaza, and a gradual lift of the siege.

Along the ongoing closure of the border crossings between Gaza and Israel during 2014, the intermittent closure of Rafah crossing between Gaza and Egypt continued to remain inaccessible. It was closed for 241 days throughout the year and opened for 124 days intermittently. It was only opened for humanitarian cases. It was also opened to allow

holders of foreign passports, patients and students to leave and, allowed Palestinians stranded in Egypt and other countries to enter.

These policies exacerbated the tragic conditions of thousands of Palestinian civilians deprived of travel due to the closure of the border crossings between Gaza and Israel. Hundreds of patients who were in urgent need for treatment abroad were prohibited by the IOF from leaving to seek medical treatment in the West Bank. The Palestinian civilians who have residency in other countries, mainly employees and students living in Arab and foreign countries, were also prohibited by Israel from leaving the Gaza Strip.

Israeli violations of the Palestinians right to movement and travel further impacted other rights such as the right to education, health, work and participation in sport and cultural activities.

The IOF continues their violations on rights for the Palestinian civilians, turning a blind eye to the agreements signed with the PA and Human Rights Conventions.

Recommendations

The violations on the right to travel has affected 1.8 million Palestinian civilians that have been denied their right to movement and travel which as ultimately effected their rights to work, education and other basic needs.

In light of the aforementioned, ICHR confirms that the Gaza Strip is still besieged by the IOF as part of Israel's policy of collective punishment that adversely affects the different walks of life for the Palestinians living in the Gaza Strip.

It also confirms that the Gaza Strip is part of the occupied Palestinian territory and so Israel should fulfill its obligations under the international law and as the occupying power, for all its civilians.

Regarding the Palestinian case, international law binds and obligates Israel to abide by its legal obligations, particularly regarding the measures required to ease movement of citizens and goods. Thus, the IOF are bound to make a final decision to end the illegal siege which is a clear violation of international humanitarian law. In the same vein, the international community should force the IOF to open Beit-Hanun \ Erez Crossing which is the only border crossing that geographical connects the Gaza Strip and the West Bank, including occupied East Jerusalem. Such a step is necessary for Palestinian civilians in the Gaza Strip to be allowed the right to movement between the Palestinian cities and abroad.

The international community should also immediately intervene to force the IOF to end use of collective punishment against the Palestinians in the Gaza Strip and open the border crossings surrounding Gaza in order to alleviate the critically deteriorating humanitarian conditions there.

Being aware of the worsening security conditions in Sinai, ICHR maintains that this does not exempt the national consensus government from its responsibility to reach an agreement with the government of Egypt to put an end to the suffering of the Palestinian civilians on the Rafah border and to agree to an appropriate mechanism to open this crossing to enable the Palestinians to exercise the right to movement and travel from and to the Gaza Strip and fundamentally end their suffering with no further complications.

United Nations A/HRC/28/NI/3

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Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other Occupied Arab territories

Information presented by the Palestinian Independent Commission for Human Rights*.

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Palestinian Independent Commission for Human Rights**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

[English only]

Submission by the Palestinian Independent Commission for Human Rights

Housing

The right to adequate housing is one of the fundamental human rights need that is considered within the system of economic, social and cultural rights. It is considered one of the most important foundations of human life and inherent dignity. This right which is enshrined in international humanitarian law constitutes the right for everyone to live anywhere in dignity, peace and security in a manner that ensures respect for his/her privacy, family and social relations as well as for their surrounding social, political, economic and cultural environment.

Article (11) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) emphasizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. The committee on Economic, Social and Cultural rights issued its general comment number (4) on the right to housing in which it identifies (7) basic elements of adequate housing. These elements constitute the basic guarantees enshrined in international law for individuals to enjoy the right to adequate housing. They include the legal security of tenure; availability of services; materials; facilities and infrastructures; affordability; habitability; location and cultural adequacy.

The right to adequate housing was not included into the priorities of the Palestinian government and its strategic plans to ensure citizens' enjoyment of the right to adequate housing in which basic services and legal protection should be available. It has not adopted a national strategic plan for housing that identifies goals, resources and the means of using these resources and, to allow civilians to participate in the strategic planning of housing. The State of Palestine should fulfill its obligations under the ICESCR to enforce the right to housing and take the necessary steps to promote and protect the civilians' right to housing. It should cooperate and pressure the international community to provide aid in this regard.

On July 2014, the right to housing in the Gaza Strip was subjected to several violations against human rights that affected the right of everyone to live anywhere in peace and security. These violations were committed by the IOF during its 51-day aggression on the Gaza Strip in which it destroyed tens of thousands of homes, forcibly displaced hundreds of thousands of Palestinian civilians and left tens of thousands of them homeless.

Since September 2000, the Palestinians in the Gaza Strip have been living an unprecedented life due to ongoing rounds of aggression and severe violations committed against international human rights laws by the IOF. Since the siege that was imposed in 2007 until August 2014, the Gaza Strip was subjected to three major military offensives that caused destruction to tens of thousands of homes. The Ministry of Public Works and Housing estimated that 245,623 housing units were demolished in the Gaza Strip in 2007; 15,000 housing units since have been erected, including 5,000 housing units as part of the reconstruction process. The data from the Ministry showed that 11,000 housing units were built by the private sector during the period of 2011 and May 2013. It has been estimated that there is now 261,000 housing units in the Gaza Strip.

The last war on the Gaza Strip aggravated human rights violations forcing tens of thousands of Palestinian civilians out of their homes due to intense bombardments. The consequences of forced eviction of civilians from their homes following the last IOF aggression are still in place. These consequences include breaches of the right to housing, coercion and harassment under the General Comment No (7) of the Committee on Economic, Social and Cultural Rights which calls for legal protection against forced eviction, harassment and other threats. Forced evictions are clear contraventions under the ICESCR.

The extensive and deliberate bombardment by the IOF has forced hundreds of thousands of the Palestinians living in the eastern and northern parts of the Gaza Strip to flee their homes and seek refuge in shelters established by UNRWA. UNRWA offered 90 shelters in its schools in different cities around the Gaza Strip due to the rising number of displaced people which reached 520,000 people. The schools sheltered around 293,000 displaced people. Furthermore, Palestinian civilians suffered from the lack of basic needs for survival. Additionally, the IOFs shelling and bombardment targeted some of these UNRWA shelters killing and injuring dozens of refugees. Others were forced to seek refuge at the homes of their relatives and friends. Though the war stopped more than 6 months ago, 30,000 people are still living in UNRWA's shelters where aid is provided for them. Their living conditions are difficult. They neither enjoy privacy nor decent life. Others live in their partially damaged homes or homes rented for them by UNRWA. Some citizens were given caravans to live in under harsh living conditions where no financial aid is provided for them. There is an absence of any hope for the start of the reconstruction process. Israel is imposing strict conditions on entry of construction materials, including cement.

The comprehensive siege which has been imposed on the Gaza Strip almost 8 years now does not allow the entry of construction materials for housing projects nor the reconstruction of the houses that were destroyed during the recent aggression. The situation on the border crossings has not changed despite the drastic consequences of the last aggression. They remain closed except for Karam Abu Salem crossing that operates according to a mechanism that was installed before the last aggression. The only change that was allowed limited the entry of construction materials for the private sector and Qatari projects.

The implementation process of the international mechanism for allowing the entry of construction materials into Gaza (Serry Plan) is rather slow. The materials are distributed by paid coupons given to affected persons to get cement for maintenance use only. Unless this mechanism is accurately implemented, the Gaza Strip needs approximately 20 years for reconstruction.

Recommendations:

The international community, mainly the United Nations, should act immediately in order to lift the siege imposed on the Gaza Strip and allow entry of construction materials and other goods. This should be seen as a legal obligation for the international community, particularly the State Parties to the Four Geneva Conventions. Allowing the siege to continue and not translating international commitments to reconstruction of the Gaza Strip into tangible practical steps implies complicity on behalf of the international community to the siege.

The international community, mainly the United Nations, should apply the necessary pressures on Israel and reconsider the international mechanism for allowing entry of construction materials into Gaza Strip (Serry Plan). It should also consider the strict conditions implemented by Israel on allowing the entry of such materials and speed up the slow bureaucratic procedures of the international mechanism used to distribute coupons on affected persons to get cement only.

Unless this mechanism is accurately implemented, the Gaza Strip needs 20 years to be rebuilt. Otherwise, how long will reconstruction take if this mechanism is slowly implemented, or not implemented at all?

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Human rights situation in Palestine and other Occupied Arab territories

Information presented by the Palestinian Independent Commission for Human Rights*.

Note by the Secretariat

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** Reproduced in the annex as received, in the language of submission only.

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Annex

[English only]

Submission by the Palestinian Independent Commission for Human Rights

Children

On 20th of November 1989, the General Assembly of the United Nations recognized the Convention on the Rights of the Child which took effect in September 1990. The preamble of the Amended Palestinian Basic Law of 2003 issued by the Palestinian Legislative Council emphasizes the commitment of the Palestinian National Authority to the principles of the international law and human rights, including the provisions of Convention on the Rights of the Child. It also recognizes a document calling for alleviating the child's suffering and respect of the child's rights in conformity with the provisions of the Convention on the Rights of the Child (CRC) that guarantees their right to live and enjoy a decent life. This document was issued during a meeting held by the United Nations General Assembly in 2001 in the presence of a large number of international agencies working with children.

Since Israel's occupation of the Palestinian territory in 1967, it has systematically targeted Palestinians including children. They blatantly violated the rights of the Palestinian children in violation of the CRC, which they have ratified. It has violated the Convention through several measures, laws, practices and daily violations of the Palestinian child's right to a decent life. The patterns of these violations are multiple and have had an adverse impact on the rights, life and well-being of the Palestinian children. Below are some of the violations and practices committed by Israeli Occupying Forces (IOF) against Palestinian children in the West Bank and Gaza Strip during 2014:

Targeting the children of the Gaza Strip during its last military aggression (Operation Protective Edge)

On 7th of July 2014, the IOF launched a large-scale 51-day military aggression against the Gaza Strip using its air, land and marine forces. During this military aggression, the IOF committed war crimes and crimes against humanity. It paralyzed all walks of life causing the unprecedented destruction to infrastructures and civilian properties and objects and forcibly displaced thousands of families. It committed heinous crimes against humanity in violation of the principles, customs and values of international humanitarian law and international human rights law amidst shameful silence on behalf of the international community.

During its military aggression, the IOF systematically violated the rights of the Palestinian civilian population, mainly children, including the right to life and decent living. Its military forces have excessively and deliberately targeted the Palestinian civilians, particularly children and women who were victims of Israeli violence. Such an example of horrendous crimes by the IOF was the air strike targeting four children of one family while they were playing on the beach. The bodies of these four children of Bakir Family were mutilated by Israeli missiles on16th of July 2014.

Amongst the 2280 Palestinian victims killed by the IOF in the Gaza Strip and the West Bank in 2014, 573 of them were Children[1], of which 561 children were from the Gaza Strip. In addition, 3189 were injured and at least 1000 will suffer permanent disabilities[2].

- During Israel's aggression, children of the Gaza Strip lost all forms of protection and security, especially when the UNRWA's schools, including other schools, hospitals and places of worship which were used as refuge were targeted.
- 26 schools were completely damaged and 122 others suffered partial damage. 17 hospitals and 45 health care centers also suffered damages[3]. The Israeli aggression hindered the educational process in the Gaza Strip by targeting a large number of schools, causing damage to dozens of them. It also displaced thousands of citizens whose homes were destroyed and forced to live in schools used as shelters after Israeli war planes targeted their homes and demolished thousands of them fully or partially. Statistics from the High Palestinian Council for Childhood and Maternity showed that the number of displaced children who sought refuge in UNRWA's schools reached (116,611) under the age of 18 years. A large number of cultural institutions and public parks were also bombarded.
- The ongoing bombardment and blatant violations of human rights committed by the IOF caused psychological trauma to many citizens of the Gaza Strip. 87% of children in the Gaza Strip suffered from trauma and disorders; 89% suffered loss of appetite and 96% suffered from sleeping disorders[4]. Tens of thousands of children suffered trauma that affected their psychological and behavioral health, such as fear, panic, inability to concentrate, urinary incontinence, and speech problems. The parents have lost any ability to ensure protection for their children. Many children suffered from malnutrition and anemia due to the deteriorating economic conditions that seriously affected their families due to more than seven years of a military siege on the Gaza Strip.
- Children of the Gaza Strip have suffered from the consequences of the Israeli military aggression that targeted their homes and infrastructures, such as water, electricity and sewerage networks as well as telephone lines and roads. Moreover, some children were used by the invading Israeli forces as human shields.
- Children in the Gaza Strip have been deprived of access to portable water and appropriate sanitary services. Palestinian civilians, including children still suffer from the ongoing tight siege of the Gaza Strip and its impact on the continuous shortages in electricity and fuel as well as the increase in poverty and unemployment.

Violation of the rights of children in the West Bank

Patterns of IOF violations against Palestinian civilians in the West Bank are multiple affecting the life and rights of the children. Israel exercised violence against children in the West Bank through military attacks, targeting of schools, and assaults by settlers. These

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1 Primary result of the Israeli violations against the Palestinian land and homes in 2014, Applied Researches Institute –Areej:
http://www.poica.org/details.php?Article=7385

2 Statistics of the victims of the Israeli aggression on the Gaza Strip, Palestinian Center for Human Rights: http://www.pchrgaza.org/portal/ar/index.php?option=com_content&view=article&id=12308:-872014&catid=154:2012-07-29-07-02-04

3 Annual report on Israeli violations against the Palestinian people in 2014, Abdullah Al Hurani Center for Studies and Documentation which is affiliated with PLO, 5\1\2015.

4 Euro-Mid Observer for Human Rights, 2014.

practices and violations deprived Palestinian children of the right to education, health, security and a decent life. Violations of rights of children and their families continues through the policy of home demolitions, detention, targeting of property, withdrawal of residence cards from Palestinian citizens of Jerusalem, prohibition of family reunification and deprivation of construction permits.

During 2014, Israel continued to target Palestinian children in the West Bank and Jerusalem by either killing or injuring them. Others suffered psychological trauma because of Israel's policy of collective punishment.

Arbitrary detention of children

Arbitrary detention of Palestinian children by the Israeli occupation forces in 2014 reached (1266). Most of them were detained in the second half of the year following the disappearance of three Israeli settlers on 12th of June. During that period, child detention increased by 36% compared with the previous year. The 700 children detained were from occupied East Jerusalem (55.3%). In the testimonies of detained children, they emphasized that they were all subjected, in one way or another, to a pattern of torture, humiliation, and deprivation of their basic human rights. Some of Israel's settlements were transformed into centers of interrogation and forcibly extracted confessions. According to the findings of inquiries conducted by some legal organizations, children who were detained in 2014 were subjected to systematic violations with the purpose of extracting confessions from them.

The IOF continues to detain (6500) Palestinians, including (300) people under the age of (18) years. The IOF recognized a draft law approved by the Israeli parliament (Knesset), allowing the courts to impose punishment of up to 20 years in prison on children charged with throwing stones at Israeli soldiers and\or settlers. The IOF use Hebrew as the language during interrogations with these children and force them to sign documents written in Hebrew which they do not understand.

- Besides subjecting detained children to physical torture and threats during interrogation, the IOF resorted to using solitary confinement as a method to extract confessions from them. One child out of five is put in solitary confinement where he\she is deprived of meeting his/her lawyer. The solitary confinement cells include sharp edges that make it difficult for the child to ensconce. Investigation processes usually last for (30) days[5]. The aim of holding children in solitary confinement is to forcibly extract confessions as evidence against them in military courts or to collect intelligence about other persons.
- Child detainees are prosecuted by Israeli military courts that ignore their status and rights as a means used to coerce them into confession.
- Practices used by the IOF has caused physical and psychological harm to the Palestinian detainees and deprives them of their right to education and normal life. Palestinian children in Israeli detention are subjected to ill-treatment through torture.
- The monthly average number of Palestinian children held in Israeli detention is 197. The detention campaign by the IOF against Palestinian children and youths has increased in the second half of 2014[6].

[5] A report on the Israeli violations against the Palestinian children issued by Euro-Mid Observer for Human Rights, published on 1\7\2014.
[6] A statement issued by Defence for Children International, 17\1\2015.

- The IOFs detention of Palestinian children endangers their current and future life. There should be a prompt international intervention to stop these vengeful measures and ensure protection for them against detentions and other measures such as torture and severe violations committed against them in Israeli detention centers.

- Israel has not adhered to the CRC and the protection of Palestinian childhood in accordance with the international human rights law, namely the Fourth Geneva Convention on the Protection of Civilians at Times of War and under Occupation. Palestinian children were cruelly treated in detention facilities that lack the minimum detention standards. They are deprived of their basic human rights, including the right to food, health, treatment, legal defense, contact with family members, and subjected to torture and/or other forms of cruel, inhuman or degrading treatment.

Violence of the occupation forces and settlers

Israeli settlers committed a heinous crime when they kidnapped, tortured and burnt to death 17 year old Muhammad Abu Khdair from Shufat in Jerusalem on 2nd of July 2014.

Violations committed by Israeli settlers and occupational military forces against the Palestinians noticeably increased in 2014. The IOF used live ammunition against Palestinians protesting in the West Bank against the Israeli aggression on Gaza and the burning of Muhammad Abu Khdair by Israeli settlers. During this period, 11 Palestinian children were killed[7]. Israel's use of collective punishment, mainly home demolitions, against the Palestinians, including children, has caused trauma to a number of them and effected their education and life.

Facts

- Palestinian childhood has no immunity to the Israeli occupation, and the violations it commits against the Palestinian children are increasing and continuous. These violations include the right to a decent life, security, and safety for Palestinian children.

- Israel's occupational violations threaten the psychological security of Palestinian children in the West Bank and Gaza Strip. They are aimed at destroying their personality and renders them into potential terrorists. They have adversely impacted the basic rights of the Palestinian child including the right to life, education, transportation, housing, and health.

- The IOF breaches the basic standards of fair juvenile courts. Israeli military courts ignore the age of child detainees and how confessions are extracted from them. These courts sometimes sentence Palestinian children held in Israeli detentions to long years or life term in prison.

- Dozens of testimonies and reports show that all Palestinian children held in Israeli detention were subjected to more than one pattern of physical or psychological torture.

- The Israeli occupation State granted its military Chief executive, judicial and legislative powers over the occupied Palestinian territories which is subject to military orders and ordinances. These military orders which are in breach of the provisions of international law criminalize acts of natural rights and impose harsh

[7] A statement issued by Defence for Children International, 17\1\2015.

punishments such as throwing stones at the IOF. The military orders which are about (1700) deny the basic rights of Palestinians. While they apply to every person living in the occupied Palestinian territories, Israeli civil and criminal legal systems only applies to the Israeli settlers living there.

- Israeli occupation soldiers involved in violations of the rights of Palestinian children still escape justice amidst international silence.

Recommendations

1. The Palestinian Independent Commission for Human Rights (ICHR) calls on the High Contracting Parties to the Four Geneva Conventions to promptly apply pressure on the IOF to stop violations of human rights of the Palestinian people, particularly the children.

2. ICHR calls on the Human Rights Council to apply pressure on Israel as the occupying power to stop the detention of Palestinian children, release those kept in detention; to stop the use of solitary confinement; end the prosecution of Palestinian children in military courts; stop depriving them of family visits, and allow them to meet their lawyers prior to their interrogation.

3. ICHR calls on international organizations to apply pressure on Israel to stop its violations on the rights of the Palestinian child and establish fair juvenile trials inside the occupied Palestinian territories.

4. ICHR calls on the Human Rights Council and international community to act to ensure protection for Palestinian children, break international silence on the violations and crimes committed by Israel against Palestinian children and bring Israeli war criminals and violators of human rights of children to justice.

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Human rights bodies and mechanisms

Information presented by the Commissioner for Fundamental Rights of Hungary*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Commissioner for Fundamental Rights of Hungary,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

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Annex

[English only]

Written statement submitted for the 28th Session of the Human Rights Council by the Commissioner for Fundamental Rights of Hungary in relation to the Recommendations of the Forum on Minority Issues at its 7th session: Preventing and addressing violence and atrocity crimes targeted against minorities

The Commissioner for Fundamental Rights is the single one "A" status National Human Rights Institution of Hungary. The CFR is aimed to protect and promote fundamental rights and vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services. In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. One of the deputies of the Commissioner is responsible for the protection of the rights of minorities living in Hungary who represents the institution before international bodies in connection with the relevant topics.

On the purpose of the presentation of the Recommendations of the Forum on Minority Issues on preventing and addressing violence and atrocity crimes targeted against minorities to the Human Rights Council, the Deputy Commissioner confirms her support in favour of it and appreciates the guidance of the Special Rapporteur on minority issues in the discussion. As the attendee of the seventh session of the Forum on Minority Issues, the Deputy Commissioner agreed on the importance of the multi-stakeholder approach towards the issue which definitely increases awareness and creates a common sense of responsibility in the society to protect persons belonging to minorities from violence. In the present submission the particular role of national human rights institution is considered with special focus on the work of the Commissioner for Fundamental Rights of Hungary.

The Deputy Commissioner is pleased to share that the recommendations concerning prevention of violence and atrocity crimes are already duly implemented. The institution receives complaints from individuals claiming that his or her fundamental rights were infringed by a public authority. In case of mentioning any of the thirteen minorities protected by the law of Hungary the case is assigned to the relevant special unit, the Deputy Commissioner and her bureau. This practice bears crucial importance since Hungary has been criticized several times by international human rights bodies for failing to collect disaggregated data on persons belonging to minorities. The Deputy Commissioner is allowed to initiate proceedings ex officio provided the prior approval of the Commissioner if she finds violations affecting indefinably large group of people or aims to monitor the enforcement of a particular right. Furthermore, the Deputy Commissioner keeps close contact with the representatives and leaders of the minorities and arranges regular discussions with them.

To address ongoing violence is definitely a challenge for all stakeholders. The most serious racially motivated attacks since World War II happened lately in Hungary: in 2008 and 2009, six Roma Hungarians were murdered, 55 people were in clear physical danger, while Roma community was pushed into a terrifying climate of physical fear and psychological anxiety. Romani individuals between 2010 and 2012 continued to be victims of intimidation, hate speech and various violent physical attacks. In March-April 2011,

paramilitary groups marched and patrolled in village of Gyöngyöspata, harassing and intimidating the Roma community. In case of the last incident, the Minority Ombudsman, predecessor of the Deputy Commissioner, took a leading role in settling the situation when besides the press releases and appearances he initiated an investigation ex officio and issued a report based on a fact finding mission on the spot. The investigation in Gyöngyöspata focused not only on the issue of patrols and paramilitary marches which got great press attention, but also on the segregation of Roma pupils in school and the segregation in the field of housing, neither of which can be separated from the events that have occurred in the above mentioned period. The Minority Ombudsman proposed several state actors to take appropriate measures in order to end violence which later were taken into account by the law makers and the law enforcement authorities.

The Deputy Commissioner considers training, education and public outreach as the most appropriate means to restore strong human rights culture in post-violence situations, bearing in mind its preventive function as well. As it was discussed during the seventh session of the Forum on Minority Issues, human rights infringements such discrimination, exclusion and inequality in a given political, social, economic situation may escalate into abuse or even violence, therefore restoration and prevention overlap each other. Accordingly, the Deputy Commissioner gives priority to raise awareness with programs addressing the society as a whole and tailored made to the needs of particular target groups as young people.

Finally, the Deputy Commissioner on behalf of the Commissioner for Fundamental Rights takes the opportunity to confirm their intention to actively engage with the international human rights system in the future, too.

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Universal Periodic Review

Information presented by the National Council for Human Rights of Egypt*.

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The Secretariat of the Human Rights Council hereby transmits the communication submitted by the National Council for Human Rights of Egypt**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

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Annex

[English only]

Information presented by the National Council for Human Rights of Egypt

Universal Periodic Review

The National Council for Human Rights (NCHR) of Egypt would like, on the occasion of the session on the outcomes of the Universal Periodic Review of Egypt on 20 March 2015 in the frame work of the Human Rights Council 28th Session, to refer to the important mission it is undertaking to promote and protect human rights in Egypt, within its mandate, especially in view that it is the demand of the people that has been expressed strongly and with persistence in the two revolutions of 25 January 2011 and 30 June 2013.

The new constitution issued on 18 January 2014 is the expression of these demands which called for a descent life, freedom, social justice and human dignity.

It represents a substantial development and is unprecedented compared to previous Egyptian constitutions in confirming the respect, fulfillment and protection of rights and freedoms.

As a matter of fact, the constitution emphasizes the principles of equality and justice to all citizens. It also confirms the State commitment to provide equal opportunities to all citizens without discrimination, to ensure equality between men and women in all civil, political, economic, social and cultural rights according to the provisions of the Constitution and to protect women from all kinds of violence. It provides that the right of belief is absolute and the right of thought, expression and creativity is ensured. It also provides the right of organizing peaceful general meetings, rallies, demonstrations and all types of protest upon notification, as well as the right to establish associations upon notification and that torture is a crime punishable by the law.

The constitution has shown a great interest in guaranteeing economic, social and cultural rights. It stipulates for the first time a precise percentage of the gross national income to be increased gradually till it reaches the universal rates, for expenditure on health, education and scientific research. It also ensures the rights of women, children, youth, persons with disabilities and dwarfs.

The National Council for Human Rights recommends that the Egyptian Government accepts the Universal Periodic Review recommendations regarding human rights in Egypt issued in the report of the Working Group of the Universal Periodic Review dated 7 November 2014 in its 20th Session (doc.A/HRC/28/16).

The National Council for Human Rights commends the measures taken by the Government to promote and protect human rights, among which holding the legislative elections in March 2015 which are organized and held by the High Commission of Elections, an independent body, until the establishment of the National Body of Elections, according to the constitution, as soon as the House of Representatives is composed.

These elections will be monitored by the National Council for Human Rights. Egyptian and Foreign NGOs approved by the High Commission will also monitor these elections in which the Egyptians abroad will participate.

The NCHR also commends issuing the law on criminalization of harassment, as well as the law severing the punishment of crimes of violence against women (Law no 50 of the year 2014) and the amendment of both the criminal law (Article 306 bis a & b) and the law on preventing the conflict of interests of the State officials to counter corruption (Law no 106 of the year 2013) in the frame work of anti-corruption measures, as well as preparing the draft law amending article 126 and 128 of the Egyptian criminal law , amending the definition of torture to be in line with the Convention on Anti-Torture in order to submit it to the House of Representatives as soon as it is composed.

However, the National Council of Human Rights is of the view that the Government must double its efforts in the field of human rights. In this regard, the NCHR demands the Egyptian Government to amend the law on the right to organize peaceful general meetings, rallies and demonstrations to be in conformity with both the Constitution of 2014 and the reservations made by the NCHR on the draft law and on the law after it has been promulgated. The NCHR demands also the amendment of the law on NGOs (Law no 84 of the year 2002) to enable them to operate upon notification to be in line with the same constitution and NCHR eagerness to promote the role of the NGOs. Furthermore, the NCHR is playing an effective role in this regard by bridging between the points of view of the Government and the NGOs in order to reach the desired law.

The National Council for Human Rights (NCHR) calls upon the Egyptian Government to improve the conditions of the prisons and places of detention and to establish a mechanism to visit the prisons that can be undertaken by the NCHR.

The NCHR also urges the Government to take steps to amend and develop both the criminal law and the criminal procedure law to promote the public rights. It calls upon the Government to double its efforts in order to eliminate poverty, illiteracy and enhance the quality of health and education and prepare the new laws and amended laws necessary to fulfill what is stipulated in 2014 constitution as regard to economic, social and cultural rights including the rights of women, children, youth and persons with disabilities.

The NCHR also calls upon the Government to respond to the requests of the special rapporteurs to visit Egypt and presents its reports to the treaty bodies in charge of the follow up of the implementation of the international conventions of human rights.

The NCHR urges the Egyptian Government and the Office of the High Commission for Human Rights to reach arrangement regarding the Agreement on its Regional Office in Cairo and sign it.

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Human rights bodies and mechanisms

Information presented by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan*.

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Commissioner for Human Rights of the Republic of Azerbaijan**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

[English only]

Written statement submitted for the 28th Session of the Human Rights Council by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

The role of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in implementation of the National Policies on Human Rights

As a fast developing country Azerbaijan created good environment for the effective protection and promotion of human rights for each person without any discrimination. During 23 year of the independence the country joined more than 230 conventions and took important steps to bring national legislation in compliance with these international treaties. Many positive changes were realized in terms of institutionalization. Creation of the Independent Ombudsman Institute in the country is a good example for this. The various reforms were conducted through state programmes aimed at developing the country, covering the regions, increasing the welfare of population, alleviation of poverty, encouraging economic activities. Since the independency, three documents of strategic importance were adopted by the Presidential Decrees and fundamental reforms on human rights have been realized: the first State Program on the Protection of Human Rights from 18 June, 1998, the first National Action Plan (NAP) on Human Rights in the Republic of Azerbaijan from 28 December, 2006, and the first National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan from 27 December, 2011. As a result of implementation of these documents the country joined to international treaties, legal framework and human rights and freedoms' protection mechanisms have been improved, numerous normative-legal acts were adopted; regular measures have been taken on protection of human rights of different groups of population, also on improving the activities of governmental agencies and on educational, scientific analytical and enlightenment activities in the area of human rights.

For support to the implementation of the above shown Plan and Program, the Working group has been created. The supervision over its work, coordination, monitoring, evaluation, analysis of implementation and preparing of relevant recommendations was entrusted to the Commissioner as an independent, "A" Status accredited National Human Rights Institution.

Alongside with the governmental bodies, relevant NGOs and mass media were also involved in the work of this Group. Public hearings were held in each of 58 urban and rural districts of the country with participation of the parliamentarians, representatives of local executive powers, municipalities, law enforcement bodies, local offices of police, prosecutor, courts, with active involvement of local communities, civil society organizations and mass media, as well as of the staff of the Regional Offices of the Ombudsman.

The conduction of these hearings encourage people, including women and youth, to express their opinions and proposals freely, without any discriminative approach serve for strengthening the trust and belief that all people have equal rights, providing freedom of speech, expression and assembly, as well as improving the democratic governance implementing the amicable resolving of disputes. At the same time, during the public

hearings the complaints were investigated, the problems were brought to the attention of concerning state agencies and high ranging officers, and in a lot of problems raised by high risk groups – people suffered from long-lasting Armenian aggression namely refugees, Internally Displaced Persons (IDPs), people with disabilities also the victims of violence were immediately solved on the spot.

In whole about 60 state programs, strategies and concepts are in process in order to improve different spheres of the society in the country, especially the welfare of population also human rights protection and promotion.

As a main part of the above mentioned strategic documents the public awareness issues play important role in getting people, relevant state bodies, civil society and mass media acquainted with it. There were organized many trainings for the parliamentarians, law enforcement bodies, for the staff of the police and penitentiary service, communities that increase their knowledge on human rights and create good conditions for the citizen-government mutual trust and cooperation which is useful in achieving amicable solutions. More than 150 legal publications, including books, textbooks, manuals, thematic leaflets and brochures were published, translated and disseminated among different groups of population, as well as presented to the libraries of governmental bodies, universities and other facilities.

Ombudsman regularly organizes trainings and seminars for representatives of the state organizations, mass media and NGOs on abovementioned three strategic documents and also the conclusions of the decades on legal education for all provided by UN, OHCHR and UNESCO, presenting them the international and national legal documents on Human Rights and sharing with them the experience, the new ideas and innovations. As a new initiative, Ombudsman conducts hierarchic education on child rights study at the secondary schools that helps children to learn their rights and, at the same time, to teach the students of the lower classes as trainers. Teaching programs and modules have been prepared in this regard.

The month-long and week-long enlightenment campaigns aimed at the promotion and protection of woman and girl child rights are regularly organized for public awareness all over the country. The Baku International Conferences of the Ombudsmen that are held every year on June 18 – National Day of Human Rights, are also good grounds to share experience, knowledge and opinions. The actual and important issues are raised in these conferences for the discussions with the ombudsmen of different countries, the representatives of relevant state bodies, independent experts NGO as well as mass media. At the end of the conference declaration on the concerning theme is adopted by the participants that make significant contribution to the work of the stakeholders and counterpart.

Commissioner actively participates in UPR (Universal Periodic Review Process) and encourages civil society to participate in it that was evaluated as a best practice by the UN High Commissioner for Human Rights. Commissioner submits parallel reports on conventions regarding different fields of human rights also raises cross-cutting issues for discussion.

By organizing conferences and seminars on Business and Human Rights in the Capital and regions the Commissioner pointed out the issues on creating good environment for woman entrepreneurs. It should be noted that up to date the Commissioner submitted 461 proposals to the government for ensuring protection and promotion of human rights and 60% of them have been realized. In the light of above mentioned the Ombudsman's activities could be summarized as follows:

- Ombudsman helps to improve the legislation by systemizing the results of the findings during the public activities, regularly sending proposals to the parliament.

- Ombudsman ensures the guarantee that the state bodies will perform their mandates adequately and avoid any abuse of the duties.
- By raising the level of the relations between state and citizens the Ombudsman creates mutual trust between them and prevents from the conflicts that is resulted in improving stability, cooperation and sustainable development.
- Being independent, the Ombudsman Institute plays a role of the complementary non-judicial state mechanism for protection and promotion of human rights, building bridge between citizens and government.
- Ombudsman conducts extended legal education among the population that serves to legal and peace culture.
- Ombudsman examines complaints on violations of human rights relating to red tape, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments.
- Ombudsman Institute is the effective tool for implementation of the international mechanisms. The complimentary reports to the government were sent and were highly appreciated. Establishing such an Institute accelerates the integration process of Azerbaijan into Europe.

I would like to say that the establishment of the Ombudsman Institute in Azerbaijan made significant contribution to the protection and promotion of Human Rights, in forming of the effective public administration that changed the approach to the human rights issues in a better way. And this made many state officers conceive better understanding of human rights conception within the democratization of the public administration and good governance.

We know that the Millennium Development Goals (MDGs) will be concluded in 2015. So this taking this into account the international community has started to work on a new development framework of 'Sustainable Development Goals' (SDGs). In this regards we expect new development goals to be realized beyond 2015, the new mechanisms and tools to reach them.

It should be noted that it was set the task of the comprehensive development concept "Azerbaijan-2020: outlook for the future". This is considered as a main duty for the country to achieve the goals put forward in the name of raising effectiveness of protection of human rights, promoting legal culture and ensuring sustainability of activities to improve the legal framework and the human rights protection system.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Information submitted by the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas*

Note by the Secretariat

The secretariat of the Human Rights Council hereby transmits a communication submitted by the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas,** which is reproduced below pursuant to rule 7 (b) of the rules of procedure contained in the annex to Council resolution 5/1, according to which the participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including its resolution 2005/74 of 20 April 2005.

* National human rights institution with "A" status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

[*Spanish only*]

Información presentada por la Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano

Declaración del Procurador de los Derechos Humanos de Guatemala: Situación de Defensores de Derechos Humanos. Guatemala, 20 de febrero de 2015

El marco normativo internacional respecto al derecho de defender los derechos está recogido en la *Declaración sobre los defensores de los derechos humanos*, en el ámbito de Naciones Unidas y, en el sistema Interamericano en la Convención Americana. Así también, dentro de la normativa nacional, la Constitución Política de la República de Guatemala establece una serie de derechos que se reconocen para toda la población, pero que se relacionan directamente con la actividad que realizan los defensores: el deber del Estado de proteger a las personas, el derecho a la libertad de acción, libertad de emisión de pensamiento, reunión y de asociación. Específicamente, el artículo 45 de ese cuerpo constitucional señala que "Es legítima la resistencia del pueblo para la protección y defensa de los derechos y garantías consignados en la Constitución."

Actualmente no existe una ley específica que regule los derechos de los defensores.

A nivel institucional, varias entidades públicas conocen de los casos de ataques contra defensores. Aun así, las respuestas para prevenir y esclarecer delitos contra defensores son ineficientes.

En primer lugar, el Ministerio Público — entidad encargada de la investigación y persecución penal — cuenta con la Fiscalía de Sección de Derechos Humanos, que cuenta con 4 unidades fiscales especializadas en investigación de casos de violaciones a derechos humanos: Unidad de Delitos Cometidos Contra Activistas; Unidad de Delitos Contra Periodistas; Unidad de Delitos Contra Sindicalistas; y la Unidad de Delitos Contra Operadores de Justicia. A septiembre 2014 la fiscalía recibió 1,075 denuncias. Entre 2013 y 2014, la Unidad de Delitos Cometidos Contra Activistas no reportaba ninguna sentencia en relación, factor que evidencia la poca efectividad del trabajo realizado por la entidad en el tema.

En segundo lugar, el Ministerio de Gobernación creó la *Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*, para determinar los patrones de los ataques contra defensoras y defensores de los derechos humanos. La instancia desarrolla diversas actividades, entre las que se incluye el *Protocolo de Implementación de Medidas de Seguridad Inmediatas y Preventivas* a favor de las y los defensores de derechos humanos, cuya acción esencial es la implementación del mecanismo de seguridad preventiva e inmediata ante el riesgo integral inminente de los y las defensoras, para lo cual se puede desarrollar seguridad perimetral, seguridad personal y seguridad de puesto fijo.

La actuación de la referida instancia no ha brindado los resultados esperados. Desde su creación en 2012 y hasta octubre de 2014, había analizado 369 casos, entre ellos 71 contra sindicalistas y 95 contra defensores del ambiente. En octubre 2014, solo a seis dirigentes sindicales se habían beneficiado con el programa de protección inmediata.

En tercer lugar, el Procurador de los Derechos Humanos está facultado para recibir denuncias de violaciones a los derechos humanos de las defensoras y los defensores. Sin embargo, si se trata de delitos de orden común debe trasladarlas a los órganos jurisdiccionales para su investigación. Dentro de su función de control administrativo puede recibir denuncias por abuso de autoridad o comportamiento administrativo lesivo a los derechos humanos.

En ese marco, derivado de la denuncia interpuesta por un grupo de defensores y defensoras de derechos humanos que acompañaron el juicio por genocidio que se desarrolló en 2013 contra dos generales del Ejército, en la que manifestaban sentirse amenazados por las expresiones emitidas en su contra por personas y organizaciones que defendían a los acusados. Asimismo, el Ombudsman declaró la violación de los derechos a la dignidad, a la integridad, a la seguridad, que constituyen una amenaza al derecho a la vida, a la igualdad, la libertad de acción y de asociación de los defensores de Derechos Humanos y los miembros de organizaciones no gubernamentales. Reconoció que los defensores realizan acciones para que se fortalezca "el Estado de Derecho en Guatemala, siendo personas que contribuyen con la sociedad en su labor a favor del respeto, defensa y cumplimiento de los derechos humanos, por lo que a cualquier tipo de acción que busca impedir, obstaculizar o anular su labor de defensa debe dársele la importancia que amerita a fin de garantizar su integridad física."

Igualmente, si los defensores y defensoras quieren denunciar una inadecuada actuación de las autoridades, hay algunas instancias en las que pueden presentar queja: Supervisión del Ministerio Público, Supervisión de Tribunales, Oficina de Responsabilidad Profesional de la PNC. A la fecha no existe ninguna sanción impuesta contra ningún funcionario, lo que desanima a defensores y defensoras a presentar denuncias.

Por último, para la protección de los defensores/as que sienten sus vidas amenazadas existe el mecanismo de las medidas cautelares otorgadas por la Comisión Interamericana de Derechos Humanos.

a. La situación de defensores y defensoras de derechos humanos en Guatemala se caracteriza por lo siguiente:

- En años reciente se han dado múltiples y constantes casos de criminalización contra defensores. La *criminalización* se refiere a aquellas amenazas, ataques y acusaciones penales que se hacen contra defensores de Derechos Humanos y que se relacionan directamente con el ejercicio de protección de los referidos derechos que ellos reivindican.

- El contexto en el que se desarrolla la criminalización de los defensores y defensoras es de violencia generalizada, generada por la delincuencia organizada transnacional operando en el territorio nacional, cooptando funcionarios de la institucionalidad del Estado; altos índices de criminalidad común e impunidad, así como la polarización de la sociedad guatemalteca y por la implementación de un modelo de desarrollo que no incorpora la visión de los pueblos indígenas y el resto de población guatemalteca. A esto se suma la inacción de interlocutores políticos frente a las demandas ciudadanas lideradas por las y los defensores de derechos humanos, así como la falta de acción oportuna de los funcionarios del gobierno central y local (departamental y municipal).

- La mayoría de los casos de criminalización contra defensores de derechos humanos está relacionada con la defensa de los bienes naturales que se encuentran en territorios de los pueblos indígenas, cuya demanda principal se relaciona con el derecho a ser consultados antes de la implementación de medidas administrativas, económicas o productivas en sus lugares de habitación o los alrededores.

- Otro ámbito donde se ha generado criminalización son los procesos penales de justicia transicional contra responsables de las violaciones a derechos humanos y genocidio durante el conflicto armado, así como por denunciar actos de corrupción.
- Las formas en que se manifiesta la criminalización empiezan con la utilización del sistema penal, accionado por personas particulares, representantes de empresas privadas y/o funcionarios, quienes acusan a defensoras y defensores de derechos humanos de delitos comunes que están contenidos en el *Decreto 17-73, Código Penal* y la *Ley contra el Delincuencia Organizada, Decreto 21-2006*. Además los jueces emiten órdenes de detención, muchas de las cuales son revocadas en la tramitación del proceso ante la falta de pruebas.
- Estas acciones crean intranquilidad y zozobra a defensores y defensoras cuando los representantes de empresas privadas y/o funcionarios declaran ante los medios de información masiva que existen órdenes de detención contra las y los defensores. Sin embargo, al presentarse los abogados de dichos activistas para consultar los expedientes, se les niega acceso a estos, de manera que no es posible corroborar si hay o no órdenes de captura.
- De igual forma se usa el Estado de Excepción como mecanismo de control social, en lugar de mecanismos efectivos de diálogo y resolución de conflictos.
- La *Ley para la Circulación por Carreteras Libres de Cualquier Tipo de Obstáculos*, que podría ser utilizada para "criminalizar la manifestación y reunión pública", en virtud que penaliza con prisión de un año y multa de 1000 a 5000 Quetzales a los incitadores de colocación de túmulos, toneles u otros obstáculos en carreteras del país o de quienes impiden el retiro de los mismos fue aprobada y actualmente se encuentra en vigencia.
- Todas estas acciones desprestigian, deslegitimizan y desmovilizan la actuación de los defensores y las defensoras de derechos humanos, estrategia en la que es fundamental el papel de los medios de comunicación, que contribuyen difundiendo una imagen distorsionada de su trabajo entre la población.
- Otro resultado de la criminalización a las y los defensores es que cuando ellas y ellos finalmente logran que se le concedan medidas de seguridad de protección personal u organizacional, hay pérdida de la intimidad y de la independencia, pues los agentes asignados deben acompañarle en todo momento, tanto en sus actividades laborales como familiares. Ello puede contribuir al aislamiento social. Incluso en algunas ocasiones el defensor o defensora debe proveerles de un lugar para pernoctar y, generalmente, proporcionarles la alimentación. Aunque la persona esté sometida a un proceso penal puede tener medidas de seguridad derivadas de previos ataques o amenazas a su vida.
- Asimismo, la criminalización puede tener impacto en el ámbito organizativo, probablemente porque los esfuerzos se dispersan y en lugar de defender y reivindicar derechos, deben centrarse en impulsar y dar seguimiento a distintas acciones para afrontar las acusaciones.
- Más preocupante aún, la criminalización puede aumentar los prejuicios en el imaginario social sobre la defensa y promoción de los derechos humanos, pues parte de la sociedad vincula esta práctica con la defensa de los delincuentes, discurso que es alimentado si defensores y defensoras son acusados de delinquir.

En conclusión, la actuación de los defensores es difícil y peligrosa, pues se desenvuelve en un contexto de violencia generalizada; la mayoría de los casos de criminalización contra defensores de derechos humanos está relacionada con la defensa de los territorios y bienes naturales de los pueblos indígenas. La criminalización utiliza el sistema penal, pues se les

acusa de distintos delitos y se dictan órdenes de detención en su contra. A pesar que existen instituciones encargadas de velar por los derechos de los defensores, estas no cumplen a cabalidad con el objetivo. Esto lleva a preocupantes consecuencias, como el aumento de los prejuicios en el imaginario social sobre la defensa y promoción de los derechos humanos, pues segmentos de la sociedad vincula esta práctica con la defensa de los delincuentes, discurso que es alimentado si defensores y defensoras son acusados de delinquir y no cuentan con medidas que garanticen su integridad y libertad de expresión.

A fin de contribuir al mejoramiento del ejercicio del derecho a defender los derechos, el Procurador de los Derechos Humanos hace las siguientes recomendaciones al Gobierno de Guatemala:

Al Ejecutivo:

Impulsar una campaña de dignificación de las acciones de defensa de los derechos humanos (incluyendo la labor de los sindicalistas y comunicadores sociales) dirigida al público en general y a las instituciones del Estado, retomando una buena práctica de la administración anterior.

Al Ministerio de Gobernación:

Continuar con el trabajo de la *Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*, así como proveyendo las medidas de seguridad dentro del *Protocolo de Implementación de Medidas de Seguridad Inmediatas y Preventivas*.

Al Ministerio Público:

Reforzar la Fiscalía de Derechos Humanos, especialmente la Unidad Fiscal Especial de Delitos contra Activistas de Derechos Humanos, Operadores de Justicia y Periodistas para que cuente con la capacidad suficiente para resolver los delitos cometidos contra defensores de Derechos Humanos.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Information submitted by the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas*

Note by the Secretariat

The secretariat of the Human Rights Council hereby transmits a communication submitted by the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas,** which is reproduced below pursuant to rule 7 (b) of the rules of procedure contained in the annex to Council resolution 5/1, according to which the participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including its resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

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Información presentada por la Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano

Declaración del Procurador de los Derechos Humanos de Guatemala: Situación de Defensores de Derechos Humanos. Guatemala, 20 de febrero de 2015

a. Marco legal del Derecho a la Alimentación

Guatemala ha ratificado el Pacto de Derechos Económicos, Sociales y Culturales, teniendo pendiente la firma del *Protocolo Facultativo correspondiente. Además, ha suscrito documentos* que reconocen y protegen el derecho a la alimentación, que no son de forzoso cumplimiento pero expresan la voluntad del Estado guatemalteco de respetar este derecho, entre los que se encuentran la *Declaración Sobre el Derecho al Desarrollo y la Declaración de Roma sobre la Seguridad Alimentaria Mundial*.

La Constitución Política de la República, además de reconocer la obligación de proteger a la persona y los derechos a la vida y a la salud, estipula en su artículo 99 que el Estado velará porque la alimentación y nutrición de la población reúna los requisitos mínimos de salud.

El Código de Salud indica que "se promoverán acciones que garanticen la disponibilidad, producción, consumo y utilización biológica de los alimentos tendientes a lograr la seguridad alimentaria y nutricional de la población guatemalteca."

Por medio del Reglamento Orgánico Interno del Ministerio de Agricultura, Ganadería y Alimentación (MAGA), el Estado se compromete a mejorar las condiciones alimentarias de la población y determina que el MAGA deberá "Atender los asuntos concernientes al régimen jurídico que rige la producción agrícola, pecuaria, forestal e hidro biológica, así como todas las relacionadas con la mejora de las condiciones alimentarias de la población, la sanidad agropecuaria y el desarrollo productivo nacional".

Los procesos para la creación de una política de Seguridad Alimentaria y Nutricional SAN iniciaron en 1974 cuando la Secretaría General del Consejo Nacional de Planificación Económica elaboró los "Lineamientos para una Política Nacional de Nutrición". En 1976, un grupo de coordinación con representantes de distintos sectores, elaboraron el Plan Nacional de Alimentación y Nutrición.

No fue sino hasta 2005 que se instituyó la Política de Seguridad Alimentaria Nacional (PSAN). Según la propia PSAN, "la Política se inserta en la estrategia de reducción de la pobreza y responde a los Acuerdos de Paz, específicamente al firmado en Oslo el 17 de junio de 1994, el cual aborda el Reasentamiento de las Poblaciones Desarraigadas por el Enfrentamiento Armado, en el cual se plantea "(…) considerar objetivos sucesivos de desarrollo, a partir de un primer e inmediato objetivo de seguridad alimentaria y adecuada nutrición para las familias y comunidades". En ese mismo año se decretó la *Ley de Seguridad del Sistema Nacional de Seguridad Alimentaria y Nutricional*[1]. Esta define la Seguridad Alimentaria y Nutricional como "el derecho de toda persona a tener acceso físico, económico y social, oportuna y permanentemente, a una alimentación adecuada en

cantidad y calidad, con pertinencia cultural, preferiblemente de origen nacional, así como a su adecuado aprovechamiento biológico, para mantener una vida saludable y activa."

Asimismo, determina la prohibición de discriminación en la obtención de alimentos; no obstante, no se contemplan recursos específicos o mecanismos de protección, aunque la ley se remite al ordenamiento civil, penal, laboral y contencioso administrativo vigente.

La referida ley señala las atribuciones y competencias institucionales dentro del Estado, relacionadas con el cumplimiento de la misma, lo que se complementa con su Reglamento y el Plan Estratégico, en los cuales establece responsabilidades para diversas instituciones. Aun así, la ley solamente integra el Sistema Nacional de Seguridad Alimentaria al poder Ejecutivo sin atribuir responsabilidades al Legislativo o al Judicial.

El actual gobierno ha impulsado desde el 2013 el *Pacto Hambre Cero*, que tiene por objetivos principales reducir la desnutrición crónica infantil en 10% en un período de cuatro años y prevenir y mitigar el hambre estacional. Este plan es la forma de operativizar y focalizar las intervenciones inmediatas para la reducción de la desnutrición crónica y aguda, pero alejadas del abordaje de las causas subyacentes y estructurales que puedan proveer sostenibilidad a la estrategia.

Dentro de este se encuentra la *Ventana de los Mil Días*, estrategia que centra sus acciones a partir del embarazo de la madre hasta los 24 meses de vida del bebé. Pero su efectividad no ha sido la esperada, ya que de otra manera los indicadores graves de desnutrición serían distintos.

En mayo de 2013 se aprobó la *Ley Marco Para Regular La Reducción de la Vulnerabilidad, la Adaptación Obligatoria ante los Efectos del Cambio Climático Y Mitigación de Gases de Efecto Invernadero*, que determina que el Ministerio de Agricultura y Alimentos (MAGA), y la Secretaria de Seguridad Alimentaria y Nutricional (SESAN) establecerán planes para que el sector agropecuario se adapte a la variabilidad y efectos del cambio climático.

Desde 2013 funciona el Gabinete Específico de Desarrollo Rural Integral para impulsar la *Política de Desarrollo Rural Integral*; en 2014 se conformó la Comisión Presidencial Institucional Técnica de Análisis de la Morbilidad y Mortalidad por Desnutrición en Menores de Cinco años de Edad, a cargo del Centro Nacional de Epidemiología (CNE) del MSPAS, y con participación de la SESAN, el Ministerio de Gobernación y la Unidad Hambre Cero.

b. Contexto general del Derecho a la Alimentación en Guatemala

Como punto de partida se debe mencionar que en Guatemala –según *la Encuesta de Condiciones de Vida* del 2011- el porcentaje de la población que vive en pobreza es de 40.38% y 13.33% vive en extrema pobreza. Las desigualdades sociales son evidentes y se confirman con los datos de ingresos mensuales promedio por quintil: el 20% de los trabajadores con menores ingresos (quintil 1) perciben en promedio un ingreso de Q286; mientras que el 20% de los trabajadores con mayores ingresos (quintil 5) recibe en promedio Q5,557 mensuales. La brecha entre ambos quintiles es equivalente a 19 veces el valor del ingreso percibido por el quintil más bajo. Esto lleva a que el índice de Gini sea de 0.53.

La situación se agrava en la vida rural donde el salario mínimo no se respeta y se pagan los días de trabajo por jornal entre Q 15.00 y Q 50.00, además de no ocupar al trabajador en la totalidad de días del mes, sino entre 8 y 15 días, es decir un ingreso que va de Q 150.00 a Q 800.00 mensuales.

Sin empleo digno, las familias rurales guatemaltecas se dedican a la siembra, cultivo y cosecha de sus propios alimentos aun con las limitaciones de acceso a la tierra y los medios

para trabajarla. Sin un apoyo efectivo del extensionismo agrícola es difícil transformar la agricultura en el área rural de una economía de infrasubsistencia a una de subsistencia y de subsistencia a una excedentaria.

Así también, se debe resaltar la falta de cumplimiento del Estado en relación a brindar los servicios básicos necesarios para una vida digna y que se interrelacionan con el derecho a la alimentación, como educación, centros de salud, agua potable, acceso a instalaciones de saneamiento e infraestructura para vivienda.

c. Acceso, producción y disponibilidad de alimentos

A nivel nacional, existe una baja capacidad adquisitiva, pues el ingreso mensual promedio es 18.3% menor al precio de la canasta básica alimenticia.

En relación a la producción nacional de alimentos, ésta se ve afectada por fenómenos naturales derivados del cambio climático, como los fenómenos meteorológicos del Niño y la Niña. Precisamente en 2014 se presentó una canícula extraordinariamente prolongada que afectó a todo el territorio. La situación se agudiza para los grupos vulnerabilizados: mujeres indígenas y niñas y niños que viven en las tierras altas y el "corredor seco" -una zona semiárida en el nororiente del país con períodos continuos de sequía, suelos degradados y bajo rendimiento agrícola-.

La zona ha sufrido alteraciones climáticas desde 2012 que han provocado déficit de lluvias y, por lo tanto, generaron pérdidas en las cosechas 2012 y 2013, haciendo que las familias únicamente cuenten con reserva de granos básicos para cubrir el 80% de los alimentos necesarios para un mes, especialmente para los meses donde se intensifica el *hambre aguda*, según el calendario estacional (de mediados de marzo a agosto).

Asimismo, en 2014 se sufrió la emergencia *derivada del brote de la roya en las plantaciones de café, principalmente en el corredor seco, y causó pérdidas entre 30% y 70% de la producción de café, especialmente para los pequeños productores*. Esto afectó directamente la reserva de recursos monetarios para la compra de los granos básicos, por lo que a partir de abril se agudizó la falta de alimentos para las familias de los pequeños productores y de los que dependen de la actividad comercial. Paralelamente, incidió en los ingresos que obtienen los jornaleros migrantes en el corte de café, lo cual disminuyó el poder adquisitivo para los alimentos.

Por todo lo anterior, la situación de disponibilidad de alimentos en el país, especialmente la relacionada con los cereales y granos básicos, se vuelve cada vez más dependiente de las importaciones, sujeta permanentemente al incremento de precios en el mercado internacional.

d. Consumo de alimentos

La dieta alimenticia de la mayoría de la población guatemalteca es de origen vegetal. *El maíz es la base de la alimentación, constituyéndose en la principal fuente de macro (proteínas, grasas y carbohidratos) y micronutrientes (calcio, hierro y zinc), aportando hasta el 60 por ciento de las calorías en las dietas de las familias viviendo en pobreza extrema.*

Asimismo, las familias no pobres dedican la mayor proporción del gasto a la compra de productos de origen animal, mientras que las de pobreza extrema gastaron casi el doble que los no pobres en la compra de granos básicos.

e. Judicialización del Derecho a la Alimentación

En 2013, el Juzgado de la Niñez y Adolescencia y de Adolescentes en conflicto con la Ley Penal del departamento de Zacapa dictó cuatro sentencias a favor de cinco niños/as del departamento de Chiquimula -parte del corredor seco-, por la vulneración a sus derechos

humanos, entre ellos a la vida, a un nivel de vida adecuado, a la salud, a la educación, a la alimentación y a la vivienda, siendo responsable por omisión el Estado de Guatemala, por no proveer programas ni políticas para evitar la inseguridad alimentaria.

La PDH realizó una verificación de la sentencia en marzo 2014 y constató que su cumplimiento no ha sido a cabalidad. Algunos de los hallazgos fueron que la obtención de alimentos en calidad y cantidad están distante, pues no cuentan con tierra propia para trabajar; uno de los niños beneficiados con la sentencia continua sin recibir educación y continúa trabajando como jornalero; en los huertos que se crearon en 2013 no hay acceso a agua para una buena cosecha.

f. Avances y desafíos de la situación de la desnutrición

En Guatemala, uno de cada dos niños padece desnutrición crónica, la cifra más alta del continente y una de las más altas del mundo. Por ende, Guatemala se encuentra entre los 24 países con la mayor carga y la incidencia más elevada de retraso en el crecimiento.

La Secretaría de Seguridad Alimentaria reportó que del 30 de diciembre 2013 al 18 de octubre 2014, se registraron 12.912 casos acumulados de desnutrición aguda total (moderada y severa) en niños y niñas menores de 5 años, que equivale a una tasa de incidencia acumulada de 58.74 por cada 10.000 menores de 5 años. El 75% de los casos tienen menos de 2 años de edad. Según estos datos, existiría una reducción del 18.8% respecto al mismo período del año anterior.

También se reportaron 130 casos de mortalidad por desnutrición aguda principalmente en los departamentos de San Marcos, Huehuetenango, Alta Verapaz e Izabal; y 13.919 casos de morbilidad por la misma causa. Cabe mencionar que estos cuatro departamentos tienen población mayoritariamente indígena. Aun así, el nivel de letalidad disminuyó en términos generales en comparación con 2013, mostrando una mejor respuesta institucional, aunque hay departamentos que persisten en las condiciones de morbilidad y mortalidad por la desnutrición aguda.

Los datos antes descritos confirman que las políticas instituidas en años reciente no han logrado los cambios previstos. Los programas destinados a mejorar el derecho a la alimentación presentan bajos índices de ejecución presupuestaria; existen constantes denuncias de politización de los mismos, por lo que no se prioriza ni beneficia a las personas efectivamente más afectadas. También existen denuncias porque los alimentos almacenados previstos para mitigar el hambre estacional no se entregan. Persiste poca información y transparencia en el establecimiento de los criterios para determinar a los beneficiarios, así como un subregistro en los casos de desnutrición. Asimismo, la participación comunitaria que se preveía promover en el tema ha sido escasa.

En conclusión, el derecho a la alimentación en Guatemala aún enfrenta graves desafíos. Los efectos del cambio climático han dificultado la producción de alimentos, sobretodo en el área árida del nororiente del país; esto a la vez ha escaseado y encarecido los alimentos. Así también, las inequidades sociales y los altos índice de pobreza y pobreza extrema dificultan gravemente el acceso a los alimentos; esto lleva a que las familias, principalmente las indígenas que habitan en el área rural, carezcan de una alimentación adecuada y se siguen presentando índices elevados de desnutrición y desnutrición crónica, especialmente en niños menores de cinco años. A pesar de algunas acciones tomadas por el gobierno en años reciente en relación al derecho a la alimentación, los demás derechos humanos que se interrelacionan con él –salud, educación, agua, vivienda, tierra, etc.- tampoco son garantizados, elemento primordial que ha impedido una mejora visible en la alimentación de las familias guatemaltecas.

A fin de contribuir al mejoramiento del ejercicio del derecho a la alimentación, el Procurador de los Derechos Humanos hace las siguientes recomendaciones al Gobierno de Guatemala:

- Garantizar y cumplir con los derechos a la salud, agua, educación, tierra, trabajo, etc. que indispensables en el cumplimiento del derecho a la alimentación.
- Ejecutar adecuadamente los fondos destinados a mejorar la economía familiar, la economía campesina, desarrollar la producción en el corredor seco, contrarrestar los efectos de la roya del café y la sequía, haciendo eficiente el funcionamiento de los programas y políticas establecidas.
- Mejorar sus procesos de planeación a efecto de que no existan periodo del año con desabastecimiento de insumos básicos para el tratamiento preventivo y reparador de la desnutrición.
- Cumplir con las medidas ordenadas por el Juzgado de Zacapa a favor de cinco niños habitantes del corredor seco.